Federal Register

Tuesday,
April 4, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5927; Amdt. No. 93–81]

2120–AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule limits the number of commercial air tours that may be conducted in the Grand Canyon National Park Special Flight Rules Area (SFRA) and revises the reporting requirements for commercial air tours in the SFRA. These changes allow the FAA and the National Park Service (NPS) to limit and further asses the impact of aircraft noise on the Grand Canyon National Park (GCNP). In addition, this action adopts non-substantive changes to 14 CFR part 93, subpart U to improve the organization and clarity of the rule. This rule is one part of an overall strategy to control aircraft noise on the part environment and to assist the NPS to achieve the statutory mandate imposed by the National Parks Overflights Act to provide substantial restoration of the natural quiet and experience of the park.

DATES: The effective date for the final rule is May 4, 2000.

Compliance with § 93.325. Until the start of the third quarter (July–September) reports will be due as follows: 30 days after the close of the first trimester (January–April); 30 days after the end of June for the May–June time period. Thereafter, reports are due 30 days after the close of the quarter.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, AFS–200, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Any person may obtain a copy of this Final Rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this Final Rule. An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661). Internet users may access the FAA's Internet site at http://www.faa.gov or the **Federal Register's** Internet site at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

This final rule constitutes final agency action under 49 U.S.C. 46110. Any party to this proceeding, having a substantial interest may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after issuance of this Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at *http://www.faa.gov* and may electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

I. History

A. FAA's Actions

Beginning in the summer of 1986, the FAA initiated regulatory action to address increasing air traffic over the GCNP. On March 26, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50 establishing a special flight rules area and other flight regulations in the vicinity of the GCNP (52 FR 9768). The purpose of the SFAR was to reduce the risk of midair collision and decrease the risk of terrain contact accidents below the rim level. These requirements were modified and extended by SFAR 50–1 (52 FR 22734; June 15, 1987).

In 1987 Congress enacted Public Law (Pub. L.) 100–91, commonly known as the National Parks Overflights Act. Public Law 100–91 stated, in part, that ''noise associated with aircraft overflights at Grand Canyon National Park [was] causing a significant adverse effect on the natural quite and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.''

Section 3 of Public Law 100–91 required the Department of Interior (DOI) to submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations provide for, in part, ''substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight.''

In December 1987, the DOI transmitted its ''Grand Canyon Aircraft Management Recommendation'' to the FAA, which included both rulemaking and non-rulemaking actions. Public Law 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon, implementing the recommendations of DOI without change unless the FAA determined that executing the recommendations would adversely affect aviation safety.

On May 27, 1988, the FAA issued SFAR No. 50–2, revising the procedures for aircraft operation in the airspace above the Grand Canyon (53 FR 20264; June 2, 1988). SFAR No. 50–2 did the following: (1) Extended the Special Flight Rules Area (SFRA) from the surface to 14,499 feet above mean sea level (MSL) in the area of the Grand Canyon; (2) prohibited flight below a certain altitude in each of the five sectors of this area, with certain exceptions; (3) established four flight-free zones from the surface to 14,499 feet MSL; (4) provided for special routes for air tours; and (5) contained certain communications requirements for flights in the area.

A second major provision of section 3 of Public Law 100–91 required the DOI to submit a report to Congress discussing ''whether the plan has succeeded in substantially restoring the natural quiet in the part; and * * * such other matters, including possible revisions in the plan, as may be of interest.'' On September 12, 1994, the DOI submitted its final report and recommendations to Congress. This report, entitled, ''Report on Effects of Aircraft Overflights on the National Park System'' (Report to Congress), was published in July, 1995. The Report to Congress recommended numerous revisions to SFAR No. 50–2 in order to substantially restore natural quiet the GCNP.

Recommendation No. 10, which is of particular interest to this rulemaking,

states: ''Improve SFAR 50–2 to Effect and Maintain the Substantial Restoration of Natural Quiet at Grand Canyon National Park.'' This recommendation incorporated the following general concepts: simplification of the commercial sightseeing route structure; expansion of the flight-free zones; accommodation of the forecasted growth in the air tour industry; phase-in of noise efficient/quiet technology aircraft; temporal restrictions (''flight-free'' time periods); use of the full range of methods and tools for problem solving; and institution of changes in approaches to park management, including the establishment of an acoustic monitoring program by the NPS in coordination with the FAA.

On June 15, 1995, the FAA published a final rule that extended the provisions of SFAR No. 50–2 to June 15, 1997 (60 FR 31608), pending implementation of the final rule adopting DOI's recommendations.

On December 31, 1996, the FAA issued the final rule (61 FR 69302) implementing many of the recommendations set forth in the DOI report including: flight-free zones and corridors; minimum flight altitudes; general operating procedures, curfews in the Dragon and Zuni Point corridors; reporting requirements; and a cap on the number of ''commercial sightseeing'' aircraft that could operate in the SFRA.

This final rule was issued concurrently with a Notice of Proposed Rulemaking (NPRM) regarding Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park; a Notice of Availability of Proposed Commercial Air Tour Routes for Grand Canyon National Park and Request for Comments; and an Environmental Assessment and Request for Comments; and an Environmental Assessment. The final rule was originally to become effective May 1, 1997. On February 26, 1997, the FAA delayed the effective date until January 31, 1998 (62 FR 8861), for those portions of the December 31, 1996, final rule which define the Grand Canyon SFRA (14 CFR § 93.301), define the flight-free zones and flight corridors (14 CFR § 93.305), and establish minimum flight altitudes in the vicinity of the GCNP (14 CFR § 93.307). The February 26, 1997, final rule also reinstated the corresponding sections of SFAR 50–2 until January 31, 1998 (flight-free zones, the Special Flight Rules Area, and minimum flight altitudes). On December 17, 1997, the effective date for these sections was delayed to January 31, 1999 (62 FR 66248). On December 7, 1998, the effective date for 14 CFR §§ 93.301, 93.305, and 93.307, was delayed until January 31, 2000 (63 FR 67543).

The FAA's final rule published in 1996 was challenged before the U.S. Court of Appeals for the District of Columbia Circuit by the following petitioners: Grand Canyon Air Tour Coalition; the Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority; the Hualapai Indian Tribe; and seven environmental groups led by the Grand Canyon Trust. See *Grand Canyon Air Tour Coalition* v. *FAA,* 154 F.3d 455 (D.C. Cir., 1998). The Court ruled in favor of the FAA and upheld the final rule.

B. Interagency Working Group

On December 22, 1993, Secretary of Transportation, Federico Pena, and Secretary of the Interior, Bruce Babbitt, formed an interagency working group (IWG) to explore ways to limit or reduce the impacts for overflights on national parks, including the GCNP. Secretary Babbitt and Secretary Pena concurred that increased flight operations at GCNP and other national parks have significantly diminished the national park experience for some park visitors, and that measures can and should be taken to preserve a quality park experience for visitors, while providing access to the airspace over the national parks.

C. President's Memorandum

The President, on April 22, 1996, issued a Memorandum for the Heads of Executive Departments and Agencies to address the impact of transportation in national parks. Specifically, the President directed the Secretary of Transportation to issue regulations for the GCNP that would place appropriate limits on sightseeing aircraft to reduce the noise immediately, and to make further substantial progress towards restoration of natural quiet, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with Public Law 100–91.

This memorandum also indicated that, with regard to overflights of the GCNP, ''should any final rulemaking determine that issuance of a further management plan is necessary to substantially restore natural quiet in the Grand Canyon National Park, [the Secretary of Transportation, in consultation with heads of relevant departments and agencies] will complete within 5 years a plan that addresses how the Federal Aviation Administration and the National Park Service'' will achieve the statutory goal not more than 12 years from the date of the directive (*i.e.,* 2008).

D. Proposed Rules

On July 9, 1999, the FAA published two NPRMs (Notice 99–11 and Notice 99–12) in accordance with Public Law 100–91, which directs the FAA to implement NPS recommendations to provide for the substantial restoration of natural quiet and experience in GCNP by reducing the impact of aircraft noise from commercial air tours on the GCNP.

Notice 99–11, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (64 FR 37296, Docket No. 5926) proposed to modify the dimensions of the GCNP SFRA. The proposed changes to the SFRA would modify the eastern portion of the SFRA, the Desert View Flight-free Zone (FFZ), the Bright Angel FFZ and the Sanup FFZ. Notice 99–12, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area, (64 FR 37304, Docket No. 5927) proposed to limit the number of commercial air tours that may be conducted in the SFRA and to revise the reporting requirements for commercial operations in the SFRA.

While the FAA sought comment on all parts of the NPRMs, there were a number of matters in Notice 99–12 that the FAA specifically requested commenters to address: (1) Whether the FAA should use a 5 month peak season (May–Sept), a three month peak season (July–September), or no peak season for purposes of assigning allocations? (2) Whether the time reported on the quarterly report should be expressed in Universal Coordinated Time (UTC), Mountain Standard Time, or another time measurement? (3) Whether reporting should be imposed as a condition of an FAA Form 7711–1 and, if so, whether the requirements of proposed § 93.325 would be appropriate for such operations? (4) Whether 180 days is a proper measurement of time for the use or lose provision proposed in § 93.321? (5) Whether the initial allocation reflects business operations as of the date of this notice? (6) Whether the allocations should remain unchanged for any specific period of time?

The FAA, in cooperation with the NPS and the Hualapai Indian Tribe, prepared a draft Supplemental Environmental Assessment (SEA) for the proposed rules to assure conformance with the National Environmental Policy Act (NEPA) of 1969, as amended, and other applicable environmental laws and regulations. Copies of the draft SEA were circulated

to interested parties and placed in the Docket, where it was available for review. On July 9, 1999, the Notice of Availability of the Draft Supplemental Environmental Assessment for the Proposed Actions Relating to the Grand Canyon National Park was published in the **Federal Register** (64 FR 37192). Comments on the draft SEA were to be received on or before September 7, 1999. Comments received in response to this Notice of Availability have been addressed in the final SEA published concurrently with this final rule. Based upon the final SEA and careful review of the public comments to the draft SEA, the FAA has determined that a finding of no significant impact (FONSI) is warranted. The final SEA and the FONSI were issued during February 2000. Copies have been placed in the public docket for this rulemaking, have been circulated in interested parties, and may be inspected at the same time and location as this final rule.

On July 20, 1999 (64 FR 38851), the FAA published a notice announcing two public meetings on the NPRM. The meetings, which were held on August 17 and 19, 1999, in Flagstaff, AZ and Las Vegas, NV, respectively, sought additional comment on the NPRMs and on the draft supplemental environmental assessment.

II. Background

The agencies have analyzed the noise situation at the GCNP and decided that a greater effort must be made to reach the statutory goals of Public Law 100–91, especially in light of the President's Memorandum. Noise generated by aircraft conducting commercial air tours presents a specific type of problem because these aircraft generally are operated repeatedly at low altitudes over the same routes. Thus, the FAA issued its 1996 final rule and instituted the aircraft cap as a means to limit aircraft noise generated by air tours.

In the 1996 final rule, however, the FAA underestimated the number of aircraft operated in the SFRA by commercial air tour operators. This problem was identified in the Notice of Clarification issued October 31, 1997 (62 FR 58898). In fact, the FAA concluded in this Notice that ''there is enough excess capacity in terms of aircraft numbers for air tours to increase by 3.3 percent annually for the next twelve years if the demand exists (62 FR 58902).'' The FAA stated that, ''in the aggregated and for most individual operators, the number of air tours provided can continue to increase while the number of aircraft remains the same.'' In view of this conclusion, the IWG recommended that the FAA and NPS develop a rule that will temporarily limit commercial air tours in the GCNP SFRA at the level reported by the air tour operators for the period May 1, 1997 through April 30, 1998.

The agencies' goal through this rulemaking is to prevent an increase in aircraft noise by limiting the number of commercial air tours. Concurrently with this final rule, the FAA also is issuing a Notice of Availability of Routes which includes certain modifications to aircraft routes through the SFRA, and a final rule modifying airspace in the SFRA. Additionally, the FAA is issuing a Final Supplemental Environmental Assessment which assesses the environmental impact of the route modifications, the commercial air tours limitation and the airspace modifications. The FAA also continues to work on the rulemaking initiated on December 31, 1996 proposing quiet technology aircraft. All of these steps are aimed at controlling or reducing the impact of aircraft noise in the GCNP.

In addition to preventing the noise situation from increasing, controlling the overall number of commercial air tours in the GCNP SFRA will facilitate the analysis of noise conditions in the GCNP and aid in the development of the noise management plan.

For purposes of determining substantial restoration of natural quiet, the noise modeling in the SEA is premised on the NPS' noise evaluation methodology for GCNP, which was published in the **Federal Register** on January 26, 1999 (64 FR 3969). The NPS formally adopted this methodology on July 14, 1999 (64 FR 38006).

III. Comment Discussion and Final Action

At the close of the comment period, over 1,000 comments were received on Notice 99–11 and 556 comments were received on Notice 99–12. Many commenters sent identical comments to both dockets. Comments included form letters sent from the air tour industry and from supporters of environmental groups. Comments were also received from industry associations (*e.g.,* Grand Canyon Air Tour Council (GCATC), Aircraft Owners and Pilots Association (AOPA); Helicopter Association International (HAI), Experimental Aircraft Association (EAA); National Air Transport Association (NATA); an environmental coalition (Sierra Club; Grand Canyon Trust; The Wilderness Society; Friends of the Grand Canyon; Maricopa Audubon Society; National Parks and Conservation Association; Nature Sounds Society; Quiet Skies Alliance); river rafting organizations (Arizona Raft Adventures (ARA); Grand Canyon River Guides); air tour operators (Airstar Helicopters; Grand Canyon Airlines; Heli USA Airways, Inc.; Papillon Grand Canyon Helicopters; Southwest Safaris); aircraft manufacturers (Twin Otter International, Ltd.; Stemme USA, Inc.); tourism organizations (Grand Canyon Air Tourism Association; Arizona Office of Tourism; Flagstaff Chamber of Commerce); government officials (Arizona Speaker of the House; Arizona State Legislature; Governor Hull of Arizona; Arizona Corporation Commission; Senator Harry Reid of Nevada; Clark County Department of Aviation); and representatives of Native American Tribes (Hualapai Tribe; Havasupai Tribe; Grand Canyon Resort Corporation (GCRC)). Some of the substantive comments include commissioned studies, economic analysis and noise impact analyses (J.R. Alberti Engineers; Riddel & Schwer).

A. Modification of SFAR 50–2

A number of air tour operators and elected officials state that SFAR 50–2 is working well and generally oppose further regulation.

AOPA and EAA state that current rules under SFAR 50–2 should be maintained without modification.

In contrast, all environmental groups point out that further regulation is necessary to bring the GCNP into compliance with Public Law 100–91.

FAA Response: This regulatory action is a further response to the legislative mandate set forth in Public Law 100–91 and the President's 1996 Executive Memorandum—to substantially restore natural quiet and experience in GCNP. The NPS Report to Congress was based on a number of studies evaluating whether SFAR 50–2 resulted in a substantial restoration of natural quiet. As discussed in the final rule in 1996 (Docket 28537, December 31, 1996; 61 FR 69302), NPS found that SFAR 50–2 had not resulted in substantial restoration of natural quiet. In that rule the FAA stated, ''An NPS analysis using 1989 FAA survey data of commercial sightseeing route activity indicated that 43 percent of GCNP met the NPS criterion for substantially restoring natural quiet. However, a subsequent NPS analysis using 1995 FAA survey data indicated that 31 percent of GCNP met the NPS criterion for substantially restoring natural quiet.'' These findings led the NPS to conclude that the noise mitigation benefits of SFAR 50–2 were being significantly eroded.

Hence, in 1996, the FAA, in cooperation with NPS, adopted the 1996 Final Rule creating a number of flight-free zones, a curfew in the Dragon and

Zuni Point corridors and imposing a cap on the number of aircraft used by each certificate holder in the GCNP SFRA. In the final rule, the FAA estimated that the regulations adopted in 1996 together with the phase out of noisier aircraft would provide substantial restoration of natural quiet by 2008. See 61 FR 69328. However, the Environmental Assessment for this rule was based on a different noise methodology. This methodology was set forth in Figure 4–4 of the EA.

In 1997, however, the FAA issued a Notice of Clarification indicating that the number of aircraft available to operators in the SFRA had been underestimated and thus the aircraft cap was not an adequate surrogate for limiting growth. The FAA found in the Notice that ''the impact of increased air tour operations as analyzed in the Written Reevaluation of the Environmental Assessment, serves to reduce the percentage of the GCNP that will achieve substantial restoration of natural quiet * * * when compared to what was originally assumed in the Final EA.'' Notice of Clarification, 62 FR 58898, 58905 (October 31, 1997).

Subsequent to the Notice of Clarification, the FAA and NPS concluded that further regulatory action was necessary to ensure the substantial restoration of natural quiet and experience in accordance with Public Law 100–91. Thus, this rulemaking together with the airspace modifications adopted in Docket FAA–99–5926 and the adoption of the new SFAR route structure will move the GCNP closer towards the goal of substantial restoration of natural quiet. As documented by the 2000 Supplemental Environmental Assessment, however, the goal of substantial restoration of natural quiet will not be met by these combined rulemakings.

B. Negotiated Rulemaking

A number of commenters, especially those representing air tour operator interests, Clark County Department of Aviation and elected officials inquired as to why the FAA chose to embark upon this rulemaking instead of using the negotiated rulemaking process.

HAI says that the proposed restrictions undermine efforts to achieve consensus on management of air tour overflights of national parks. According to HAI, the future of GCNP overflight rulemaking lies in a process of open, public conversation to seek ways in which the many legitimate, conflicting interests at stake can be balanced and accommodated to the fullest practicable extent. HAI states that the current proposals are large steps in the wrong direction, representing illogical, arbitrary, and unworkable impositions on an already strained process. HAI says that the current proposals for harsh new restrictions undermine the air tour community's hope for reasoned discussion of divergent points of view among persons of good will.

Clark County Department of Aviation (Clark County) criticizes the FAA for failing to develop its proposed rules without extensive and meaningful input from all affected stakeholders. Clark County states that the FAA has repeatedly rejected invitations from Clark County and others to initiate a negotiated rulemaking process.

FAA Response: The FAA notes that this rulemaking requires it to make very difficult decisions that significantly impact small businesses in order to comply with the statutory mandate to substantially restore natural quiet and experience in GCNP. Because of the nature of the issues involved, both the FAA and NPS have reached out to affected parties to try to achieve a workable solution.

For example, in an attempt to work with the stakeholders, the FAA and NPS held a public meeting in Flagstaff, AZ on April 28, 1998. Participants in this group included representatives of air tour operators, environmental groups, Native American Tribes, and local Las Vegas and Tusayan government officials. The group was asked to comment on the agencies then proposed route structure and to use the time together to negotiate a better solution, if the members did not like the proposal. The scheduled two day meeting lasted less than a day as most stakeholders held firm to their established positions and were unwilling to negotiate. Most parties were not willing to even consider another route structure, nor were they willing to consider participating in another group discussion or possible mediation.

A subsequent meeting was held on July 15, 1998 between the FAA and the Hualapai Tribe in Peach Springs, Arizona to discuss a tentative air tour route proposal around the western Grand Canyon/Sanup area. The Hualapai did not view the proposal favorably and informed the agencies of their own plans to meet with the air tour operators in an attempt to reach a separate agreement. Those talks, however, apparently proved fruitless.

The divergence of comments received to this rule reflects the FAA's historical experience with this issue. There are polarized points of view on this topic. During the time that this debate has been ongoing, the various groups have not been able to reach any agreement. Thus, based on the FAA's and NPS' experiences with this issue, the agencies do not see that a timely negotiation process is possible. The FAA and NPS have expressed a willingness to consider negotiated or consensus proposals presented by the stakeholders and have encouraged the stakeholders to try to work toward this goal. However, in the absence of such proposals it is necessary to move ahead to meet the deadline of 2008 for substantial restoration of natural quiet and experience that was imposed by the President's 1996 Executive Memorandum. Any further attempts at negotiated rulemaking will only delay the process.

C. Justification for Rulemaking With Respect to Restoration of Natural Quiet (Pub. L. 100–91)

Air tour operators and many other commenters state that the restoration of natural quiet has already been achieved. These commenters state that there is significant evidence demonstrating that the flights as presently configured fall well within the NPS' target goal that 50% of the park achieve ''natural quiet'' for 75–100% of the day. Further regulations merely seek to punish the air tour industry. In a form letter, 313 commenters state that the statutory mandate of Public Law 100–91 has been met.

GCATC states that the FAA is charged with the responsibility of promoting and protecting aviation and the safe use of the nation's airspace and that the proposed rule is beyond the scope of this mandate.

The Honorable Mr. Jeff Groscost, Arizona Speaker of the House, stated at the Flagstaff, Arizona public hearing on August 17, 1999 that restricting operations to 1997–1998 levels is unwarranted. He indicated that visitor complaints about noise are at insignificantly low levels because the vast majority of park visitors (over 95%) are concentrated in areas that are off-limits to air tours. Speaker Groscost indicated that the FAA and NPS are off base in attempting to erase noise for the benefit of the remaining 5%. In fact, according to FAA and NPS numbers, Speaker Groscost states that 3% of this 5% are river rafters who could not possibly hear aircraft noise over the sound of the river. He comments that to ''restore natural quiet'' for the benefit of the 1.6% of park visitors, at the cost of limiting access by air, is grossly unfair and unreasonable. This is especially true in light of the fact that air tour passengers represent over six to eight times the number of backcountry users.

U.S. Senator Harry Reid (Nevada) stated that he voted for Public Law 100–91 and believes strongly in its goals. However, ''* * * it was never the intention of Congress to authorize the apparently endless regulatory process that has ensued.'' Senator Reid stated further that ''* * * the most fundamental problem is that the Park Service has based its plan for restoring natural quiet on a controversial and untested approach for measuring noise.'' The approach used needs to reflect the actual perception of visitors to the park as shown in surveys that show that visitors perceive a dramatic improvement in the noise levels of the park over the last 10 years.

The Grand Canyon River Guides Association and the Utah Chapter of the Public Lands Committee of the Sierra Club state that the number of flights must be reduced in order to meet the goal of substantial restoration of natural quiet. The continued growth alternative is unacceptable. These commenters note that the current annual growth, according to the data, is about three percent per year, despite claims by some air tour operators.

The Grand Canyon River Guides Association states that the goal set forth in the Environmental Assessment—*i.e.,* tour aircraft audible for less than 25 percent of the day in more than half of the park area—is a weak standard. This commenter believes that this should be a minimum goal. The bottom line is that only 19 percent of the park is naturally quiet during the busiest days of the summer. The commenter states that the claims of a 42 percent restoration are based on an annualized day.

The Maricopa Audubon Society says that the FAA's standard of quiet is weak and the substantial restoration of natural quiet should mean most of the park most of the time (for example, 75% of the Park, 100% of the time). This commenter adds that the number of air tours has more than doubled from 50,000 in 1987 to around 120,000 now, and that the FAA should both reduce the cap the number of air tours to at least 1987 levels in order to achieve the natural quiet that the law mandates. Finally, this commenter adds that the FAA should require the removal of all flights below the rim.

The environmental coalition states that Public Law 100–91 provides no statutory authorization for the agencies' attempts to balance the maintenance of a ''viable'' air tour industry against the mandated restoration of natural quiet. Congress unequivocally provided the NPS' plan, to be issued by FAA, ''* * * shall provide for substantial restoration of natural quiet''. These commenters do not believe that Congress directed the agencies to temper, delay, or compromise the mandate according to industry needs. The agencies' only duty beyond restoring quiet was ensuring that the plan to restore quiet did not adversely affect air safety. These commenters urge the agencies to choose an alternative that will achieve the statutory mandate within 12 months. It is simply impermissible for the agencies to decide unilaterally to protect the industry, rather than considering readily available alternatives that would immediately restore natural quiet.

The environmental coalition supports the definition of 'natural' used by NPS, however, it believes the definition of ''substantial restoration'' is flawed. It suggests that a more appropriate definition would require natural quiet throughout the day in 50 percent of the park, as a minimum and natural quiet for at least 80 percent of the day in the other half of the park.

The Utah Chapter of the Public Lands Committee of the Sierra Club noted at the Flagstaff Public Hearing that the derogation of North Rim vista points and trails during the short summer season is emblematic of runaway noise pollution in the canyon generally.

ARA says that the standard that 50% of Grand Canyon National Park must be naturally quiet 75 to 100% of the day is inadequate. This would mean that the relatively quiet half of the park could experience aircraft noise one minute in every four, and the remainder of the park could experience aircraft noise virtually all day long non-stop. ARA states that Congress intended for a visitor to the Grand Canyon to experience a substantial restoration of natural quiet regardless of which day(s) the visitor decides to visit the park. Each visitor should have the opportunity to experience natural quiet regardless of the day, the month, or the season he or she elects to visit.

FAA Response: Public Law 100–91 requires NPS to develop recommendations regarding ''actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights.'' These recommendations are to provide for the ''substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight.'' Section 3 of the Public Law specifically directed the FAA to ''implement the recommendations of the Secretary [of the Department of Interior] without change unless the [FAA] determines that implementing the recommendations would adversely affect aviation safety.'' Thus FAA's authority to regulate in this manner is clear.

The NPS defined ''natural quiet'' and identified it as a natural resource in its 1986 ''Aircraft Management Plan Environmental Assessment for Grand Canyon National Park'' which underwent extensive public review. The term was subsequently discussed in numerous public documents which have undergone public review, including NPS Management Policies (1988) and the Advance Notice of Proposed Rulemaking concerning Overflights of Units of the National Park System published in the Federal Register on March 17, 1994.

The fact that NPS was given the responsibility to define the methods for achieving substantial restoration of natural quiet is entirely consistent with its general authority to manage national parks. NPS' Management Policies (1988, page 1:3) states that, with respect to units of the national park system, the terms ''resources and values'' refer to the ''full spectrum of tangible and intangible attributes for which parks have been established and are being managed'' including ''intangible qualities such as natural quiet.''

The NPS definition of ''substantial restoration of natural quiet'' involves time, area, and acoustic components. Because many park visitors typically spend limited time in particular sound environments during specific park visits, the amount of aircraft noise present during those specific time periods can have great implications for the visitor's opportunity to experience natural quiet in those particular times and spaces. Visitors with longer exposures, such as backcountry and river users have more opportunity to experience a greater variety of natural ambient and aircraft sound conditions, as they typically move through a number of sound environments.

Based on noise studies, the NPS has concluded that a visitor's opportunity to experience natural quiet during a visit, and the extent of noise impact depends upon a number of factors. These factors include: the number of flights; the sound levels of those aircraft as well as those of other sound sources in the natural environment; and the duration of audible aircraft sound experienced by a visitor.

NPS recommended an operations limitation in its 1994 Report to Congress, See Section 10, Recommendation 10.3.10.3. It is but one method being implemented to control noise in the GCNP. The type of operations limitation adopted in this rule is a modification of the aircraft cap

which was adopted in the 1996 Final Rule. The FAA and NPS determined after adoption of the 1996 Final Rule that the aircraft cap did not adequately limit growth. This conclusion was explained in the reevaluation that was prepared to support the Notice of Clarification (discussed above in section III(A), Modification of SFAR 50–2, of this rule). The written reevaluation was necessary because the number of aircraft available for use in the GCNP SFRA was twice the number that was evaluated in the 1996 rule. The NPS noise modeling, as well as FAA noise modeling, indicated that the potential growth in the number of operations could erode gains made toward substantial restoration of natural quiet.

The FAA, in consultation with the NPS, believes that the operations limitation adopted in this final rule strikes an appropriate balance between the ground and air users of the GCNP while making significant steps towards substantially restoring natural quiet. Thus the rule is consistent with the intent of the Public Law. Nothing in Public Law 100–91 requires the FAA or NPS to ban aircraft overflights of the GCNP to reach substantial restoration of natural quiet. In fact, Senator McCain, in discussing this legislation on the Senate floor indicated that ''what this measure [the bill that was adopted as Public Law 100–91] does is propose a process whose end result will be to strike a balance among all those individuals and interests who use our Nation's Park System.'' 133 Cong. Rec. S 1592. In an Oversight Hearing on the implementation of Public Law 100–91, Senator McCain further indicated that ''* * * it has never been my intent or the intent of Congress that air tours should be banned over the Grand Canyon or any other park. Air tours are a legitimate and important means of experiencing the Grand Canyon * * * But other uses and values, including the right of visitors to enjoy the natural quiet of the park, must be protected. Again, the challenge and the goal is balance.'' Hearing before the Subcommittee on Aviation of the Committee on Public Works and Transportation, House of Representatives, 103rd Cong., 2d Sess. (July 27, 1994).

As a general rule, flights do not operate below the rim. In certain isolated situations aircraft being operated on certain fixed routes and at fixed altitudes may operate below the ground level of the rim temporarily. This occurs because of terrain fluctuations. Safety is not compromised by allowing these flights to operate below the rim for a short period of time. This action is consistent with Pub. L. 100–9 and its legislative history. In Pub. L. 100–91, Congress granted the FAA, in consultation with the NPS, the authority to determine rim level because ''delineation of the area needs to be made taking into account the varying rim levels of the canyon and the potential impact of this provision on flight activities and operations.'' S. Rep. 97 (100th Cong., 1st Sess. (1987)), reprinted in 1987 U.S. Code Cong. Admin. News 664.

D. Quiet Technology Incentives

Several commenters criticize the proposal for failure to offer any quite technology incentives. As an incentive to convert to quiet technology, Papillon proposes special routing similar to the flight route that presently exists at GCNP Airport, and allowing operating hours from 7:00 a.m. to 7:00 p.m. with no limitations on the amount of flight during those daylight hours. Grand Canyon Airlines suggests that allocations should be increased for operators who make use of quiet aircraft technology.

Grand Canyon River Guides Association stated at the Flagstaff Public Hearing that noise-efficient technology still makes noise. The environmental coalition notes that the incentive to convert should be access to the GCNP SFRA airspace.

Governor Hull states that the FAA and NPS have failed in their obligation to provide incentives for quiet technology aircraft. The Governor states that the federal government should provide expanded opportunity and access for all citizens to experience the GCNP. In the proposed rulemaking, however, the Governor notes that the FAA is proposing to limit access to the GCNP rather than pursuing a common sense approach to expand access through improved technology. Governor Hull notes that before proceeding with further limitations on the air tours that provide many citizens with their only access to the wonders of the Grand Canyon, the FAA and NPS should act aggressively to provide the incentives for quite technology. The Governor supports the view expressed by Senator McCain, who sponsored the original Act, that reasonable air tour access can be protected—along with the preservation of natural quiet—if the responsible federal agencies diligently pursue technological incentives.

Stemme USA, Inc., a manufacturer of gliders, requests that the FAA exclude the Stemme S10, as well as other aircraft that can operate silently, from all current and future flight restrictions over the Grand Canyon. Twin Otter International, Ltd. (TOIL) also requests that its aircraft be considered as satisfying the quiet technology standards. Air tour operators also made suggestions regarding the types of aircraft that should be considered as being within the framework of quiet technology. Papillon Helicopters provided information at the public hearing in Flagstaff, Arizona that based on assurances that the NPS would make exceptions for quiet aircraft, Papillon has invested over $6.5 million in quiet aircraft technology. A Papillon representative stated that no exceptions have yet been made and no laws have been passed that justify this investment. Grand Canyon Airlines stated that it, along with several other companies, contributed $50,000 to the NPS to allow them to finish research on quiet technology. Grand Canyon Airlines paid $1.4 million for each of their ''Vistaliner'' aircraft that employ quiet technology and that are noise efficient because they can carry more passengers on fewer flights.

Grand Canyon Airlines states that the higher fixed costs associated with investments in quieter aircraft make it more likely that Grand Canyon Airlines and other similarly situated operators will suffer disproportionately from the limitations on air tour operations. Not only does the NPRM not encourage investment in quiet aircraft but Grand Canyon Airlines states it also creates an incentive for operators to dump more expensive quiet technology aircraft for cheaper, noisier aircraft.

Grand Canyon Airlines also states that allocations should not be imposed, particularly for quiet aircraft, but if imposed they should be guaranteed not to decrease. Allocations should increase for operators investing in quiet technology. AirStar Helicopters urges the FAA to move quiet aircraft technology to the front burner, not wait and consider it in the future.

Comments received from members of the Arizona State Legislature state that the proposal, combined with the Park Service's newly adopted noise evaluation methodology, creates such uncertainty for the air tour industry that they have little incentive to invest in one of the most effective means of reducing aircraft sound—quiet technology. Without a sense of stability about the future, operators are reluctant to invest in costly new equipment. Faced with caps and curfews, they are understandably concerned about their ability to amortize the investments. Their lenders are equally concerned about the industry's future, adding another dimension of uncertainty for operations.

ARA says that the incentives for quieter aircraft should not further compromise the goal. Rather than allowing quieter aircraft more routes, quieter aircraft should be used to meet the existing substantial restoration goal.

FAA Response: The FAA and NPS note that current comments are a complete reversal in direction from comments to the NPRM on Noise Limitation of Aircraft Operations in the Vicinity of Grand Canyon National Park (Docket 28770). Many air tour operators commenting to the NPRM in Docket 28770 voiced wide dissatisfaction with the FAA's NPRM on quiet technology. Commenters to that docket stated, among other things, that the FAA did not have statutory authority to require quiet technology, and that imposition of quiet technology would pose an unreasonable financial burden on the air tour industry. Additionally, many of these commenters disagreed with the proposed aircraft categories. In contrast, in Docket FAA–99–5927, commenters supported the adoption of quiet technology and urged the FAA to move forward with the final rule in Docket 28770.

The FAA and NPS have been in ongoing discussions to resolve the numerous issues raised in the Noise Limitations rulemaking proceeding. During this time, growth in the air tour industry appears to have been only temporarily arrested by external factors such as the economic downturn in Asia. Thus, the agencies have determined that in order to make significant strides towards meeting the statutory goal of ''substantial restoration of the natural quiet'' by the 2008 deadline it is necessary to impose this operations limitation. This operations limitation will limit operations while the FAA and NPS work to implement the quiet technology rule and take any other steps necessary to effect the Comprehensive Noise Management Plan.

The FAA received a number of requests from air tour operators and aircraft manufacturers for exceptions to the operations limitations rule based on the type of aircraft used in the GCNP. The FAA declines to adopt any exceptions to this rule at this time. Until the FAA and NPS adopt a final rule defining quiet technology, requests for exceptions to this rule based on quiet technology are premature.

The FAA realizes that this rule may not be consistent with encouraging operators to invest in quiet aircraft. However, since the FAA and NPS have not yet resolved how to define quiet technology/noise efficiency, operators would be premature in making such equipment decisions. Since the FAA intends this operations limitation to be temporary, the continuation of any such limitation will be revisited upon adoption of a rule addressing quiet technology/noise efficiency. The comment suggesting an allocation increase for operators investing in quiet technology is also premature since there is no definition of quiet technology.

E. Delay of Rulemaking

The Arizona Corporation Commission expresses concern over the lack of input from Arizona government officials into the proposed rules. Since the GCNP is Arizona's premier tourist destination and an extremely significant component of Arizona's tourism industry, the FAA should be working with Arizona government officials in developing any rules affecting air tours in the Grand Canyon. This commenter notes that the Rocky Mountain National Park air tour ban was largely prompted by the urgings of Colorado public officials to preemptively ban air touring before it emerged.

A number of air tour operators requested that the FAA delay adoption of the final rule until the noise model validation study has been completed. Papillon says that there should be no allocations until there is a reasonable scientific evaluation of ambient sound levels. This evaluation, according to Papillon should establish what the ambient sound levels are at the sites in question in the Grand Canyon.

FAA Response: The FAA appreciates the input from state and local officials to the proposed rules. The rulemaking process has welcomed and encouraged participation by state and local government officials. The decision to proceed with substantial restoration of natural quiet at the GCNP was made by Congress in Public Law 100–91. Moreover, as discussed above in Section C, that legislation specified the process for moving forward with substantial restoration of natural quiet. This is the process that the FAA and NPS have adhered to in developing these proposed rules.

In response to the requests to delay this rule pending completion of the noise model validation study, the FAA declines to create further delay. The noise methodologies used in support of this rule are explained further in the Supplemental Environmental Assessment Chapter 4 and Appendices A through F. The noise modeling employed in the Supplemental Environmental Assessment is the Integrated Noise Model (INM), the FAA's standard computer methodology for assessing and predicting aircraft noise impacts. This model incorporates the ambient database supplied by the NPS. Since 1978, the INM has been widely used by the aviation community both nationally and internationally, and has been continuously refined and updated by the FAA. For these reasons, the FAA has determined that a modified version of the INM 5 is an appropriate tool to use for the purposes of analyzing noise impacts in the vicinity of the GCNP and for determining substantial restoration of natural quiet in the GCNP.

F. Impact on Native American Tribes

Hualapai Nation

Grand Canyon Resort Corporation (GCRC), representing the economic interests of the Hualapai Nation (hereinafter Hualapai Tribe), opposed the operations limitations. It states that a freeze on overflights will effectively cost the Hualapai Tribe millions of dollars in lost revenue. Air tour operators rely on the marketability of an approach to Grand Canyon West (GCW) through the Grand Canyon as it presently operates. With the imposition of overflight restrictions, GCRC states that the Hualapai Tribe would sustain a combined loss of approximately $3.5 million dollars over the next two years. In comparison to the Hualapai government's annual operating budget of $2.5 million, this is tantamount to shutting down a sovereign tribal nation. In a recent survey to GCRC's primary air tour operators, it was determined that a 220% increase in business is projected by 2001. In 1998, approximately 14,919 flights were conducted at a profit to the Tribe of approximately $950,000. GCRC projects that by 2001, 32,869 flights will be conducted at a profit of $2,799,777. For a Tribe which is attempting to develop its economic resources without the intrusion of casino gambling at the south rim, development of GCW is worthy of federal support rather than federal suppression. GCRC requests that any operations limitation within the SFAR avoid negatively impacting the Native American constituency.

GCRC notes that in addition to the potential loss of landing fees which would occur if the operations limitation were imposed, there would be a loss of potential revenue associated with tourist amenities offered at GCW which are dependent on the discretionary spending of visitors. Sales from gift shops, Hualapai arts and crafts, horseback riding excursions, hiking trails, food items and cultural presentations would suffer. GCRC currently employs 35 full-time Hualapai employees and another 20 seasonal full-time employees. This does not account

for 15 Hualapai tribal members employed by air tour operators.

The GCRC and the Hualapai Tribal Counsel both indicate that the proposed operations limitation would have an immediate negative effect upon the number of Hualapai who derive their livelihood from tourism at GCW. Thus they request an exemption for the Hualapai Nation to ensure the continued employment of Hualapai community members whose reservation suffers from a 50–65% unemployment rate.

The GCRC is currently considering measures which would safeguard development at GCW. Environmental threshold studies are in progress, which will review the development capacity of GCW. It should remain, however, in the Tribe's control to determine the quality and quantity of development at GCW. In this regard, GCRC notes that the proposed rulemaking is a subtle violation of the Hualapai Tribe's sovereign right towards self-determination.

Additionally, the GCRC states that the FAA's proposed rulemaking would contradict the initiatives taken by federal agencies, which have funded capital improvements and developments at GCW over the last decade. Approximately $5,000,000 has been expended in the development of GCW in an attempt to follow through with the DOI's commitment to protect and conserve the trust resources of federally recognized Indian tribes and tribal members. The Bureau of Indian Affairs participated in a guaranteed loan to the Tribe for tourist facilities at GCW totaling $1.3 million. The Environmental Protection Agency has expended approximately $1.5 million in solar powered water line construction to GCW. The United States Department of Agriculture has expended approximately $150,000 in water tank construction. In addition to this, the Hualapai Tribe has invested $250,000 in an award-winning land use plan GCW, $1 million in airstrip and road pavements, $150,000 in well drilling procedures, $565,000 in the construction of a terminal building and parking lots, and $25,000 in helicopter landing pads and fuel tank arrangements. This does not include the salaries of Hualapai employees who have dedicated years of planning to the development of GCW.

Havasupai Tribe

The Havasupai Tribe believes that the proposed action to limit commercial tours in the SFRA is not stringent enough and that all commercial fixed-wing tour flights should be removed from the Havasupai Reservation.

Navajo Nation

The Navajo Nation has expressed its satisfaction with the proposed rules during discussions pursuant to consultations conducted in accordance with the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA).

FAA Response: The FAA has consulted with the Native American interests throughout this rulemaking process. Consultations with the ten Native American Tribes and/or Nations potentially impacted by the proposed rules have been conducted in accordance with NEPA and NHPA, Section 106. Currently, such consultations have concluded for all potentially impacted Native American Communities except the Hualapai Tribe. During the comment process it was brought to the FAA's attention that the Hualapai Tribe had a substantial economic interest in air tour business brought to its reservation via air tour operators operating under FAA Form 7711–1, Certificates of Waiver or Authorization, to deviate from the Green 4 helicopter route and Blue 2 fixed wing route and land on the Haulapai Reservation.

The FAA and NPS recognize that as federal agencies they owe a general trust responsibility to Native American Tribes or Nations, including the Haulapai Tribe. Pursuant to this unique trust responsibility, the FAA and NPS are essentially acting in the interest of the Tribe, however, they do so in the context of other federal statutes and implementing regulations. Of particular concern when considering fulfillment of the federal trust responsibility is the economic development and self-sufficiency of the Native American Tribe or Nation.

Based upon information provided by the Hualapai Tribe, approximately 45% of the Hualapai Tribe's global fund budget is derived from air tour operations at GCW. This income includes air tour operator contracts and landing fees, and the tourist dollars brought to the Hualapai Reservation by air tours. The income from the air tour operations is used to support youth activities and other social programs on the Reservation. In addition, air tour operators employ members of the Hualapai Tribe.

The economic analysis in the regulatory evaluation indicates that this rulemaking would significantly adversely impact the Hualapai Tribe's economic development and self-sufficiency, thereby triggering the FAA's and NPS' trust responsibilities. While the air tour numbers derived from the operators' reported data are not identical to the numbers provided by GCRC, the FAA, using its numbers, still finds the impact of the operations limitation to be significantly adverse. The FAA believes that the numbers provided by GCRC in its comments include flights occurring outside the SFRA. In order to fulfill this trust responsibility, the FAA and NPS are excepting flights from the commercial air tour allocations requirement when those flights meet the following conditions: (1) transit the SFRA along the Blue 2 or Green 4; (2) operate under a written contract with the Hualapai Tribe; and (3) have an operations specification authorizing such flights. This exception is discussed in detail in Section H (7).

G. Discrimination Against Air Visitors

Several commenters believe the proposal suggests an intentional discrimination against the rights of air tour visitors to GCNP as compared to ground visitors. Several general aviation commenters have also suggested that the proposal is discriminatory against GA aircraft in favor of air tour aircraft.

One commenter states that the air tour visitors are not being discriminated against but rather they are being asked to abide by the same type visitation limitations that are imposed on other park visitors.

HAI says that visitation of the Grand Canyon by air is uniquely ecologically friendly because air tour visitors start no fires, leave behind no waste or trash, disturb no plants or soil, introduce no alien species, and remove or deface no artifacts. HAI says that efforts to further restrict air touring of GCNP are fundamentally misguided from an environmental perspective and that the current proposed restrictions will be destructive of the environment and the economy, have no basis in fact, and should be withdrawn.

The Cottonwood Chamber of Commerce (Arizona) says that 95% of park visitors are unaffected by aircraft sound, and that devastation of the air tour industry will result in the loss of aerial viewing opportunities for the elderly, handicapped and those with tight time schedules. The commenter says that many persons choose air tours due to physical or health limitations.

Las Vegas Helicopters states that the proposed rule will stifle access to the Grand Canyon by people who are handicapped, impaired or elderly and goes against the policies established by Congress when it adopted the Americans with Disabilities Act.

FAA Response: It is not the intent of the FAA or NPS to discriminate against visitors (air or ground) to the GCNP nor do the agencies believe this rule discriminates against air tour visitors. Indeed, air tour visitors are in many ways inseparable from ground visitors as over 50% of the air tour visitors to GCNP also visit the Park on the ground. Also, people who are handicapped, impaired, or elderly will continue to enjoy air tour access to the GCNP.

As discussed above in Section C, Congress' intent in adopting this legislation was to manage the airspace in the GCNP and to balance the competing interests. The FAA and NPS believe that the rule adopted today, together with the Final Rule in Docket FAA–99–5926, modifying the airspace and the adoption of the new route structure through the SFRA achieve that balance.

One standard method used by the NPS and other land management agencies to protect resources is to limit access to, or use of, certain resources. To protect the ground resources at GCNP, overnight camping in the backcountry and river rafting, for example, are limited through a permit process. Similarly, a number of services offered by park concessionaires, *e.g.,* lodging, mule rides, etc., have limited availability. At GCNP, only entrance to the Park and dayhiking are available to unlimited numbers of visitors. Air tour visitors are presently the only ''specialized'' park visitors (*i.e.,* river rafters, backcountry campers, mule riders, lodgers, etc.) that are not limited by number.

The agencies do not agree that this rule is misguided from an environmental perspective. While air tour visitors do not have the same type of environmental impact as ground visitors, they do have an environmental impact due to aircraft noise. That impact was recognized by Congress and is the reason for the adoption of Public Law 100–91.

H. Section by Section Review

1. Definitions Section 93.303

This section proposed new terms and definitions for commercial air tour and commercial Special Flight Rules Area Operation.

Several commenters opposed the proposed definition for ''commercial air tour'' because they believe it is too broad. Clark County states that the greatest long-term threats posed by the proposed rulemakings are the ominous precedents they would create for all facets of commercial aviation in the West, especially non-tour operations. Clark County is concerned because the rule leaves open the possibility that commercial transit flights between Las Vegas and Tusayan may be regulated in the same fashion as ''air tours.'' The risk that restrictions on non-tour flights will be imposed is heightened by the vague guidance in the proposed rules regarding what constitutes an ''air tour'' instead of a transit flight. Clark County believes that the list of factors FAA says it will consider leaves too much discretion in FAA's hands and allows no certainty for tour operators. Many of the factors identified (*e.g.,* ''narratives'' referring to areas on the surface, frequency of flights, and area of operations) could apply to all commercial air carrier service operating along established jet routes east of Las Vegas. The danger is even more acute for regional and charter services in the area.

Clark County believes that the threat posed by this precedent extends to commercial aviation beyond the Grand Canyon air tour operators. Almost every commercial flight into and out of Clark County's airports passes over a National Park or Wilderness Area at some point in their route. The suggestion that point-to-point transportation could be the subject of restrictions due to unsubstantiated ''natural quiet'' concerns creates a specter of significant restrictions on aviation in Nevada and elsewhere in the West. It also constitutes an unreasonable, unprincipled and illegal transfer of airspace jurisdiction from FAA to NPS and other federal land managers.

FAA Response: The FAA is adopting the proposed definitions with modification. The definition for commercial air tour is intentionally broad. This definition requires the operator and the FAA to look at the actual flight and the nature of the operator's business to determine whether a flight is considered a commercial air tour. Simply because a flight may have one or two of the characteristics identified in the definition does not necessarily mean it is a commercial air tour. Clearly the more factors that apply to a particular flight, the more likely that flight will be found to be a commercial air tour. The Administrator may give more weight to some factors than others in making a determination under this definition.

This definition is necessary because currently there is no definition for the term ''commercial sightseeing operation,'' which is the term used in part 93, subpart U.

The FAA appreciates the comments voiced by air tour operators regarding the new definition for commercial SFRA operations. The commenters are concerned because the FAA will begin to collect data on all transportation flights and other flights conducted by commercial air tour operators in addition to commercial air tour flights. The FAA also will require reporting for flights conducted under FAA Form 7711–1. The adoption of this definition is necessary, however, so that the FAA and NPS can begin to understand the aircraft patterns in the SFRA. Public Law 100–91 states that noise associated with aircraft overflights at GCNP is causing ''a significant adverse effect on the natural quiet and experience of the park.'' Thus, the FAA hopes that by creating a broad term capturing many types of flights, and requiring reporting of those flights, it can develop a database that more accurately reflects aircraft noise in the park. The term Commercial SFRA Operations by definition only applies to an operator who holds GCNP SFRA operations specifications. This rule is focused on air tour operations, including flights in support of air tours, because the agencies have determined that other types of operations within the SFRA contribute minimal noise overall.

The definition of Commercial SFRA Operation is modified to eliminate the term ''air tour'' from the operations specification reference. This recognizes the fact that the FSDO may issue other types of operations specifications due to changes in market dynamics. The term commercial SFRA operations is broader than the term commercial air tour and includes not only air tours, but also transportation, repositioning, maintenance, training/proving flights and Grand Canyon West flights. Grand Canyon West covers flights conducted under the section 93.319(f) exception. All of these flights will be defined in the ''Las Vegas Flights Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual.'' The term ''commercial SFRA operations'' does not include supply and administrative flights conducted under contract with the Native Americans pursuant to an FAA Form 7711–1 or any other flights conducted under an FAA Form 7711–1.

2. Flight Free Zones and Flight Corridors Section 93.305

The proposed changes to this section incorporate the definitions set forth in section 93.303 by changing the term ''commercial sightseeing operation'' to ''commercial air tour''. While there were several comments on section 93.303 regarding the definition of commercial air tour, there were no comments specific to section 93.305. The changes

to this section are adopted as proposed and are reflected in the final rule addressing the airspace modifications, Docket No. FAA–99–5926.

3. Minimum Flight Attitudes section 93.307

The proposed changes to this section incorporate the definitions set forth in section 93.303 by changing the term ''commercial sightseeing operation'' to ''commercial air tour''. While there were several comments on section 93.303 regarding the definition of commercial air tour, there were no comments specific to section 93.307. The changes to this section are adopted as proposed and are reflected in the final rule addressing the airspace modifications, Docket No. FAA–99–5926.

4. Requirements for Commercial Special Flight Rules Area Operations, Section 93.315

No comments were received specific to this section, thus this section is adopted as proposed. Pursuant to these amendments, section 93.315 is reorganized and revised to remove the capacity limitation on aircraft and to delete the reference to the outdated SFAR 38–2. The FAA believes that removal of the capacity restriction is necessary because it is aware that some air tour operators are using larger capacity aircraft. The FAA wants to ensure that each operator, regardless of the capacity of the aircraft, is held to the same operational and safety standards. This section will continue to require commercial SFRA operators to be certificated under 14 CFR part 119 to operate in accordance with either 14 CFR part 121 or part 135 and to hold appropriate GCNP SFRA operations specifications.

5. Section 93.316

Section 93.316 is removed and reserved as proposed.

6. Curfew Section 93.317

The proposed rule modified section 93.317 slightly to apply the curfew to all commercial SFRA operations. The curfew set forth in current part 93 applies to ''commercial sightseeing operations,'' which is an undefined term.

Some commenters state that the change in the curfew is too broad and captures too many types of flights that are not air tours. GCATC believes the curfew should be eliminated in lieu of the operations limitations cap. Air tour operators contend that the curfews have caused significant loss to operators located at GCNP Airport and air tours should be permitted from 7 a.m. to 7 p.m.

Sunrise Airlines states that the most effective way of restoring natural quite in the GCNP is to remove air tour noise. This penalty against the air tour operators is already in place in the form of curfews for the Dragon and Zuni Point corridors. Using a summer day of 14 hours from sunrise to sunset of which 4 hours is during the curfew, the result is more than 28% of the day has no air tour noise. Sunrise believes consideration also must be given for the many days during the slow months of the winter season when the GCNP attains the goal of ''Substantial Restoration of Natural Quiet''. Sunrise suggests the possibility of imposing a curfew on the current Blue One route, and believes that would restore natural quiet in much the GCNP without the need to either limit growth (allocations) or further limit the airspace available for air tours (routes).

Grand Canyon River Guides Association states that the curfews are not long enough and should be expanded to narrow the window for air tour operations.

The environmental coalition believes that the existing curfew should be applied to all commercial SFRA flights and should be expanded to provide significantly more quiet time after sunrise and before sunset.

FAA Response: The amendment to this section is adopted as proposed. The definition for commercial SFRA operations includes all commercial operations conducted by certificate holders authorized to conduct flights within the GCNP SFRA. Specifically, the types of flights included within the curfew are commercial air tours, training/proving, maintenance, transportation, and repositioning flights. Only flights conducted under FAA Form 7711–1 are not subject to this curfew. This exclusion is necessary because the limitations applicable to these flights are already specifically defined on the FAA Form 7711–1. In some instances, it may be necessary to issue an FAA Form 7711–1 for the Dragon or Zuni Point corridor for flights that may not be subject to the curfew, *e.g.,* NPS or other public aircraft flights. The FAA believes that amending the curfew to include all commercial SFRA operations will improve the management of aircraft noise in the Dragon and Zuni Point corridors.

While a number of commenters requested changes to the curfew hours, or an extension of the curfew to other areas, these issues were not proposed in the NPRM and thus are outside the scope of the proposed rule.

The agencies believe that the curfew is still required on the Dragon and Zuni Point corridors even with the adoption of the operations limitation. The operations limitation will not affect the timing of flights. The FAA and NPS believe that it is important to protect natural quiet during curfew hours in the most heavily visited portions of the eastern portion of the GCNP. The NPS has identified these areas as some of the most sensitive in the park. For computational purposes the NPS has established the 12-hour period between 7 AM and 7 PM, rather than the period from sun-up to sunset, as the ''day'' in the definition of substantial restoration. The fixed curfew that was established in the 1996 final rule makes an important contribution to substantially restoring natural quiet on a daily basis and mitigating noise impacts on the experience of the park visitors in this portion of the Canyon.

7. Operations Limitation Section 93.319

Section 93.319 of the proposed rule sets forth the requirement that an air tour operator must have an allocation to conduct commercial air tours in the GCNP SFRA. The NPRM set forth the following parameters regarding the initial allocation process: (1) Initial allocations would be based on the total number of commercial air tours conducted and reported by the certificate holder to the FAA for the period May 1, 1997 through April 30, 1998; (2) allocations would be apportioned between peak and non-peak season and between Dragon and Zuni Point corridors and the rest of the GCNP SFRA; and (3) an operator's allocation will be reflected in its GCNP SFRA operations specification.

Initial Allocations. Grand Canyon River Guides Association supports capping operations at the level reported by operators for May 1, 1997 through April 30, 1998. However, this commenter adds that there are many more flights that should be counted against allocations such as aircraft-repositioning flights, training flights, and transportation flights.

Many air tour industry commenters state that the initial allocations do not reflect the business operations as of the date of Notice 99–12. All air tour industry commenters state that the 1997–1998 base year used for establishing the allocations was an unusually slow year and does not reflect the typical year for Grand Canyon air tour operations.

NATA stated that the base year for determining allocations (May 1, 1997 through April 30, 1998) was one of the worst years ever. This commenter

contends that it is inappropriate for the FAA to base the future number of tours on any single year and that an average of operations over a multiple-year period would provide more reasonable figures.

Similarly, Papillon Grand Canyon states that May 1, 1997 through April 30, 1998, is not an appropriate year for establishing allocations. Governor Hull also believes that the FAA is using an abnormal, low operation year as a baseline in establishing the allocations for air tours.

Windrock Aviation states that, while there is a provision within the NPRM for certificate holders to request modification of the allocation, the NPRM states specifically that the FAA will not consider increasing an initial allocation because of changes in consumer demand or the fact that the base year was not a busy year, operationally. This commenter says that this would result in the revocation of their certificate and put them out of business. Windrock recommends that, in their case, another year be utilized as the base year without reducing that number of flights from the total number of flights allocated from the remaining air tour operators.

The environmental coalition states that allocations must include all commercial SFRA flights, including river takeouts, FAA Form 7711–1 flights, so-called 'transportation' and 'repositioning' flights, and training flights. Flights that are not truly tour flights should be strictly routed to avoid the SFRA. To a visitor on the ground, each pass is a noise event.

AirStar Helicopters believes that the allocation process is predicated on a flawed and non-factual process and therefore should not exist.

Heli USA states that it should not be subject to any allocations or other limitations because it operates under special authorization granted on FAA Form 7711–1. The commenter says that its operations are in support of the Hualapai Nation, and that its flights are not considered commercial air tours. Heli USA recommends that the FAA clarify that all flights under FAA Form 7711–1 be excepted from the definition of ''commercial air tours.''

A number of air tour operators requested increases in their allocations for specific reasons, in addition to the generic concerns raised above about the representation of the base year. Reasons for these requests can generally be categorized into six main areas: (1) Allocations should be adjusted due to significant aircraft down time during the base year; (2) allocations should be adjusted to incorporate operations that were not reported because they were not conducted in the SFRA but, with the airspace modifications implemented on January 31, 2000, next year will be within the GCNP SFRA; (3) allocations should be adjusted for flights servicing the Grand Canyon West Airport on the Hualapai Reservation; (4) allocations should be adjusted for operators just starting up in the base year; (5) allocations should be adjusted due to FAA error; and (6) allocations should be adjusted where certificate holders merged or acquired the assets of another operator.

FAA Response: The FAA is adopting the operations limitation with modifications discussed below. The FAA and NPS recognize that the operations limitation will limit the ability of the operators to increase the number of commercial air tours in the GCNP SFRA and limit revenue. The FAA and NPS are sensitive to the fact that this limitation may have a trickle down effect with regard to other businesses dependent upon air tour passengers and to the tourism industry generally located in Las Vegas, Nevada and Arizona. However, the NPS recommended in its report to Congress that this operations limitation is necessary in order to control the aircraft noise in the GCNP SFRA and make progress towards reaching the goal of substantial restoration of natural quiet.

Data on operations levels for the year May 1, 1997 through April 30, 1998 comprised the most accurate and current data available during the period that this rule was being drafted. Data subsequently collected from the industry for the year May 1, 1998 through April 30, 1999 show a slight decline in the number of total operations from the previous year. Thus the FAA and NPS believe that the period from May 1, 1997 through April 30, 1998 is a representative year for the purpose of imposing this allocation.

The FAA, in consultation with NPS, seeks to find a balance between the environmental interests of ground visitors and the interests of the air tour industry that will help the agencies manage the GCNP airspace to further achieve substantial restoration of the natural quiet. Thus, to ensure that the allocations process is fair, the FAA has established broad parameters to apply to the various types of allocations issues presented by the operators. Therefore, while the base year remains the same for the implementation of this rule, the FAA has adjusted the air tour allocations in accordance with the following parameters:

First, air tour operators who presented credible documentation indicating significant aircraft down time due to maintenance problems will receive adjusted allocations. The FAA determined that tit would not be in the best interest of safety to penalize an operator who had experienced maintenance problems and removed that aircraft from operation to assure safe operations and therefore did not have that aircraft in operation for much of the base year.

Second, air tour operators who presented documentation that they conducted flights that were not reportable during the base year because they were outside the GCNP SFRA, but would be included in the GCNP SFRA in the future, will not be limited at this time. This exception is adopted at § 93.319(g). The FAA is unable to impose a fair limitation since there was no requirement to report these flights. Upon implementation of this rule, certificate holders will be required to report these commercial SFRA operation. At the conclusion of the first year of reporting, the FAA plans to impose an operational limitation equal to the number of commercial air tours reported for the 12-month period. Additionally, the FAA plans to issue a notice of proposed rulemaking to amend section 93.309(g)

Third, the FAA and NPS have decided to except operators complying with specific conditions from the individual allocation process. This is necessary in order to fulfill the government's trust responsibility to the Hualapai Tribe. As detailed in the regulatory evaluation accompanying this rule, the Hualapai Tribe would be significantly adversely impacted from an economic perspective if the operations limitation were applied to operators servicing Grand Canyon West Airport in support of the Hualapai Tribe. These conditions are as follows:

(1) The certificate holder conducts its operation in conformance with the route and airspace authorizations as specified in its GCNP SFRA operations specifications;

(2) The certificate holder must have executed a written contract with the Hualapai Indian Nation which grants the certificate holder a trespass permit and specifies the maximum number of flights to be permitted to land at Grand Canyon West airport and at other sites located in the vicinity of that airport and operates in compliance with that contract; and

(3) The certificate holder must have a valid operations specification that authorizes the certificate holder to conduct the operations specified in the contract with the Hualapai Indian Nation and specifically approves the

number of operations that may transit the Grand Canyon National Park Special Flight Rules Area under this exception.

Fourth, the FAA is not adjusting allocations for one operator who stated that he was a start-up business. The FAA notes that this operator was issued operations specifications for GCNP on October 21, 1996. The FAA is not considering growth as a factor in its reassessment.

Fifth, the FAA is adjusting some air tour operators' allocations where the operators presented documentable evidence that there was an error in the FAA calculation.

Sixth, the FAA is adjusting some air tour operators' allocations where they have presented documentable evidence of a contractual transaction such as a merger or acquisition. These adjustments were based on the contracts negotiated between the parties and attempt to reflect the agreements negotiated between those parties.

The FAA is not limiting any other types of flights other than commercial air tours. The FAA considers a commercial air tour to be synonymous with the term commercial sightseeing flight as that term is used in part 93, subpart U. Since operators were only required to report commercial sightseeing flights under current § 93.317, the FAA had no regulatory basis for limiting any other type of flight. The FAA also disagrees with some commenters who suggest that non-tour flights should be routed to avoid the SFRA. The SFRA was designed to ensure the use of standardized routes, altitudes, and flight reporting procedures to improve safety. This standardization has significantly decreased accidents and incidents in the GCNP SFRA.

Peak Season Apportionment. Most air tour industry commenters are opposed to the separation of allocations between peak and off-peak season. Some state that there would be no incentive on the part of operators to move off-peak season allocations to peak season and that this separation would be an unnecessary burden.

Papillon indicates that if allocations do become regulation, there should be no restrictions with regard to what season they can be utilized. Park visitation dictates the number of flights that will be conducted in a given season. If allocations are on an annual basis flight usage will follow the historical past.

Papillon also states that the concern that air tour operators may shut down during off-peak season to move off-season allocations into peak-season is not valid. There would be no incentive to move off-season flights to peak-season. This highly technical business requires continuity of personnel, extensive and recurrent training, off-season maintenance, etc. The locale of operation is home for the employees of these aviation businesses and they must sustain their families on a year-round basis. Papillon indicates that the existing limitation on the number of aircraft is more equitable than a limit to the number of tours.

Sunrise Airlines states that a five-month peak season (May–Sept) would be acceptable for purposes of assigning allocations.

Air Vegas also finds no reason to control peak/off-peak season as the marketplace already does this. They are in agreement with May-September being on average busier months but argue that depending on promotional travel campaigns, other months such as March or October have the potential of equal or more enplanements.

Air Grand Canyon and Windrock Aviation propose that, due to the uncertainty of both the weather and tourism, generally, a five month period be utilized to distinguish ''peak'' and ''non-peak'' seasons. As a caveat to the issue of seasonal caps, the commenters recommend that each operator be allowed to shift ten (10) percent of his ''non-peak'' allocation to the first and last month of the peak season in the event the operator should determine that doing so would better utilize his allocation. Air Grand Canyon and Windrock say that this would allow the operator to compensate for whether problems and tourism volume fluctuations. These commenters believe it also would allow the operator to utilize allocations that might otherwise be lost during a substantial and protracted winter period. Finally, these commenters state that implementation of the recommendation would keep the ''non-peak'' allocation from being used during the busiest peak months, thereby avoiding the air corridor ''congestion'' issues that the NPRM anticipates would occur in the event that the operator was allowed to shift all of his allocation to the busiest summer months.

The environmental coalition recommends a seasonal cap to prevent the movement of allocations from one season into another. A peak-season term of May 1 to September 15 is proposed. Certain areas of the park are completely unusable to visitors that seek natural quiet. This coalition recommends that a 24 hour per day tour free season be established for at least the eastern half of the SFRA from September 15–December 15 (this period being prior to the snow season). Additionally, it recommends a daily reservation limit as is applied to other park activities. Such a limit would control the maximum daily number of air operations per route.

ARA is also concerned about allocations shifting into low noise time periods and lesser-used flight routes. This commenter favors the caps becoming far more specific, such that low use periods and areas of the Canyon don't ''fill in'' given the inadequacy of the restoration standard.

FAA Response: The FAA is not adopting the peak season apportionment for allocations at this time. The FAA is adopting the Dragon and Zuni Point corridor apportionment. The FAA has a number of statutory obligations that apply in this rulemaking in addition to the statutory mandate set forth in Public Law 100–91. These obligations include compliance with the Small Business Regulatory Evaluation and Flexibility Act (SBREFA). SBREFA requires the FAA to consider the impact of FAA regulations on small businesses and to mitigate adverse impacts if possible. In an effort to strike a balance and fulfill the FAA's statutory obligations under Public Law 100–91 and SBREFA, the FAA is not apportioning the allocations between peak and off-speak season. By eliminating this additional allocation restriction, the operators will have some flexibility in their business operations so that they can mitigate revenue losses that this operations limitation may cause them.

The FAA and NPS, however, are still concerned about the level of noise in the GCNP, especially during the peak summer season. Since the goal of this rule is to limit operations to control noise, any significant increases in noise during the summer season when noise in the GCNP is the highest would frustrate that goal. Thus, the NPS will be closely monitoring the noise levels in the GCNP over the next two years to determine whether the noise level in the park is increasing, remaining constant or decreasing. If the NPS determines that the noise levels in the GCNP are increasing during the summer season, it may be necessary to adopt a peak season apportionment of allocations in two years.

The FAA also will closely monitor the level of air tour traffic through the GCNP SFRA to ensure that safety is not compromised by air tour operators concentrating their allocations during the summer time period. If congestion becomes a significant problem during certain time periods such that safety is compromised, the FAA may need to take action to mitigate the problem. As noted in the NPRM, the FAA's Airport and Airspace Simulation Computer

Model (SIMMOD) demonstrated significant use of the routes during the peak season. At this time, based on the information obtained from the operators regarding their current operations, and the specific provisions that are being adopted for operators servicing the Hualapai Indian Reservation at Grand Canyon West airport, the FAA believes that it is not necessary to impose the peak season apportionment from a safety perspective.

While some operators oppose having any restrictions on allocations at all, the FAA and NPS have determined that it is necessary to apportion allocations between the Dragon and Zuni Point corridors and the rest of the GCNP SFRA. This apportionment is necessary because the noise in the Dragon and Zuni Point corridors is higher than elsewhere in the SFRA. For instance, the FAA regulatory evaluation accompanying this rule notes that fixed wing aircraft and helicopters that feature or include the Dragon corridor account for just over 45% of all air tours during the base year. Zuni Point tours account for just over 19% of all air tours. By apportioning allocations, the noise in the Dragon and Zuni Point corridors should not increase overall. Additionally, this restriction will help to maintain the number of air tours in these corridors at a manageable level.

The FAA is not adopting the suggestions that a tour free season be imposed on the eastern half of the SFRA or that a daily reservation limit be imposed on the air tour operators. Neither of these suggestions were considered in the proposed rule, thus they are outside the scope of this rulemaking.

8. Transfer and Termination of Allocations Section 93.321

This section, as proposed in the NPRM, established that allocations are an operating privilege, not a property right. It also sets forth certain conditions applicable to allocations, namely: (1) Allocations will be reauthorized and redistributed no earlier than two years from the date of this rule; (2) any allocations held by the FAA at the time of reauthorization may be redistributed among remaining certificate holders proportionate to the size of each certificate holder's current allocation; (3) the aggregate SFRA allocations will not exceed the number of commercial air tours reported to the FAA for the base year of May 1, 1997 through April 30, 1998; and (4) allocations may be transferred subject to several restrictions. The proposed restrictions on allocation transfer were as follows: (1) These transactions are subject to all other applicable requirements of this chapter; (2) allocations designated for the rest of the SFRA may not be transferred into the Dragon or Zuni Point corridor, but allocations designated for the Dragon and Zuni Point corridor may be transferred into the rest of the SFRA; and (3) a certificate holder must notify the Las Vegas Flight Standards District Office within 10 calendar days of an allocation transfer.

This proposed section also contained a reversion provision whereby the allocations reverted back to the FAA upon voluntary cessation of commercial air tours in the GCNP SFRA for any consecutive 180-day period. Additionally, the FAA retained the right to redistribute, reduce or revoke allocations based on several conditions.

Property Interest: Papillon states that allocations must be considered a property interest; to not consider them as such would be tantamount to the unconstitutional seizure of property. This commenter states that their company and others have spent millions of dollars in the development of employees, facilities, equipment, marketing, promotion, good will, etc., yet the business would be of little value if allocations were only an operating privilege. Papillon believes that allocations if imposed must be an intangible asset belonging to each respective air tour company.

FAA Response: The FAA is adopting without change the limitation that allocations are not a property interest. Title 49 U.S.C. § 40103(a) states that the ''United States Government has exclusive sovereignty of airspace of the United States.'' The FAA is authorized to develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. See 49 U.S.C. § 40103(b). Under 49 U.S.C. § 44705(a), all air carriers or charter air carriers are required to hold an operating certificate issued by the FAA authorizing the named person to operate as an air carrier. This operating certificate is issued only after the FAA makes a finding the ''the person properly and adequately is equipped and able to operate safely under [the law].'' Operating certificates may be amended, modified, suspended or revoked by the FAA as prescribed under Section 44709.

Thus, the FAA has been granted clear authority to regulate airspace and air carriers. The FAA has used this authority, together with its authority in Public law 100–91, to establish the GCNP SFRA and to regulate for noise efficiency. Given its clear mandate to regulate airspace, the FAA cannot grant property rights to an air carrier to use the airspace. Thus an allocation must be an operating privilege.

Two year limitation; Several air tour industry commenters believe that the two-year trial term for the proposed rule puts them at a severe hardship since they will be unable to predict the future of their business activity. These operators argue that the allocation system should not be imposed, but if adopted it should be guaranteed not to decrease.

Sunrise Airlines states that allocations assigned to each operator must not be decreased for a period of at least five years. Less than five years will discourage any potential movement towards quiet aircraft technology.

NATA states that the two-year term of the allocations would impair an operator's ability to invest in new equipment and technologies by allowing for further reductions in the number of tours permitted. NATA points out that operators must have some predictability with regards to the future level of activity in order to obtain financing for capital improvements, investment in quiet technology aircraft, and other business-related investments. In addition, because the allocation system is based on a review of only one year's operations, many businesses will experience significant reductions in activity, further restraining the financial situation of the operators.

Some members of the Arizona State Legislature state that the noise evaluation methodology that will be used during the two-year period that flight limitations are imposed is a cause for great concern among air tour operators. The sound threshold set for Zone 2 is so low that aircraft will be unable to avoid exceeding it, thereby setting the stage for further restrictions at the end of the two-year period.

The Public Lands Committee of the Sierra Club, Utah Chapter, states that it conditionally supports the FAA capping the number of flight operations at 88,000 annually. However, this commenter cannot support the tentative ''try it two years and then we'll see'' aspect of the proposal.

FAA Response: The FAA is adopting the provision that permits it to reauthorize and redistribute allocations no earlier than every two years. This provision will require allocations to remain unchanged by the FAA for a twenty-four month period from the effective date of this rule. At the end of that time period, the FAA may, but is not required, to engage in another rulemaking to address additional data submitted under § 93.325, updated

noise analysis or the status of the Comprehensive Noise Management Plan. The only way in which allocations could be changed in a shorter time period, would be if it were necessary for the FAA to utilize its authority to regulate for safety. Noise is not a component of the conditions in this section.

The FAA and NPS believe it is necessary to permit modifications of the allocations on a 2-year term based upon the results of additional noise analysis. This is to allow NPS the ability to address noise issues that arise that may impede its ability to meet the statutory goal of substantial restoration of natural quiet as set forth in Public Law 100–91. Thus, for instance, if noise in the GCNP SFRA is increasing due to an increase in commercial SFRA operations, further limitations may be necessary.

The NPS acknowledges that efforts to achieve substantial restoration of natural quiet are path breaking, complex, and controversial. Perhaps the greatest confusion has resulted from the noise evaluation standards employed by the NPS, and specifically the ''8 decibels below ambient.'' While the 8 decibels below ambient standard is a somewhat technical issue, it may be most easily thought of as a mathematical conversion factor necessitated by the computer modeling. The FAA's computer model (INM) uses a ''weighting'' (averaging) process to derive a single, ''average'' value to describe the ambient level. The NPS' computer model (NODSS) uses multiple frequency bands. NODSS, like the human ear, can discriminate sounds by both frequency and volume. It is well accepted in the acoustic community that sounds can be heard below the ambient level. In this case, aircraft sounds may be heard below the ambient level because the aircraft is producing sounds of a different frequency than found in the natural environment. Thus, to use INM and to capture the moment when aircraft become audible, a conversion of minus 8 decibels from natural ambient conditions is used. The minus 8 is derived from laboratory studies that showed that sounds of different frequencies become audible at between minus 8 and minus 11 decibels below ambient. To reiterate, the minus 8 decibels below ambient is not the sound level at which aircraft must operate or the acoustic level that must be achieved. It is a mathematical conversion necessitated by the computer modeling. The minus 8 decibels below ambient describes the ''starting point'' at which the measurement of substantial restoration begins.

Transfer. The Public Lands Committee of the Sierra Club, Utah Chapter, states that what is called for, given expiring time under the 1987 law and 1996 Executive Order, is a decreasing cap until operations are returned to approximately 1975 levels. Congress first identified the noise as a problem as far back as 1975, and Public Law 100–91 was the logical, decisive sequel for a problem only getting worse.

Windrock Aviation and Grand Canyon Air say that limiting the transfer of allocation destroys the value of the business that is entitled to make its profits from the allocation it is otherwise allowed. Additionally, these provisions, along with the provisions of the NPRM limiting the number flights that can be flown, generally, severely impact on the ability of those who might otherwise attempt to establish a profitable business in the flying of scenic tours at the GCNP. They believe that the economic impact of these issues was not raised in the NPRM. These commenters add that limitations on allocation transfer should be dropped from the NPRM, and that free market capitalism should be allowed to control what each individual operator does with its allocations.

ARA believes that allocation caps should not be transferable and supports the notion that allocations that fall into disuse be retired. The retirement of some allocations over time may prove to be the most viable method for reducing air tours toward levels of 1987. It is important not to squander the opportunity that the FAA has to maintain control over allocations of ''time in airspace,'' not allow transfers of allocations between operators, and retire underutilized allocations.

The Environmental Coalition opposes any transfer of allocations from one corridor to another citing possible deterioration of conditions in less-noisy areas.

FAA Response: The FAA is adopting Section 93.321(b)(1)–(4) without modification. The purpose of this operations limitation is to maintain status quo and prevent the noise levels in the GCNP from increasing while the Comprehensive Noise Management Plan is developed. The limitation is not designed to be a declining cap. Thus the FAA is not adopting the request to impose a declining cap. Consistent with the intent of Public Law 100–91, as expressed in the legislative history surrounding the adoption of that law, the FAA is not attempting to ban air tours in the GCNP. It is seeking to make progress toward the mandated goal of substantial restoration of natural quiet.

Thus to provide the operations with some flexibility to meet varying demand, the FAA is permitting allocations to be transferred among air tour operators subject to three restrictions. First, all certificate holders are required to report any transfers to the Las Vegas Flight Standards District Office in writing. Permanent transfers (mergers/acquisitions) require FAA approval through the modification of the operations specifications. Temporary transfers (seasonal or monthly/weekly/daily leases) are effective without FAA approval. The FAA will not modify operations specifications for temporary arrangements.

Second, certificate holders are subject to all other applicable requirements in the Federal Aviation Regulations. Third, allocations authorizing commercial air tours outside of the Dragon or Zuni Point corridors are not permitted to be transferred into the Dragon or Zuni Point corridors. Allocations specified for the Dragon and Zuni Point corridors may be used to other routes in the GCNP SFRA. The FAA believes it is necessary to maintain some restrictions on allocation transfers to safety manage the airspace and manage aircraft noise. This is especially important since the Dragon and Zuni Point corridors tend to be the busiest locations in the park for air tours. The FAA does not see any reason to limit transfer of allocations from the Dragon and Zuni Point corridor into the rest of the SFRA since this airspace is not as congested as these corridors and the noise level is not as high. Additionally, given the consumer demand to see the Dragon and Zuni Point corridors by air, the FAA does not believe that significant levels of tours will be transferred from those corridors into the rest of the SFRA.

Termination after 180-day lapse. Several air tour industry commenters state that the period allowed for inactivity should be lengthened. This is of particular concern for small operators that are susceptible to slow-downs inherent in the business.

Windrock and Air Grand Canyon (AGC) recommend that this provision be dropped. They note that it is possible for an operator to use all of its non-peak allocations early in the non-peak season and delay using its peak season allocations until a month after the peak season starts and thereby lose its allocations because of the 180-day lapse rule. These commenters maintain that this portion of the NPRM makes no logical, financial, or ''noise reduction'' sense. Windrock and AGC state that ''the taking away of 'allocation' that has not been used for 180 days by any

scenic tour operator is inconsistent with both the rights of the tour operators and the stated purpose of PL 100–91.''

Papillon states that in fairness to all operators, but in particular small operators, the period allowed for inactivity should be lengthened. Small operators are most susceptible to slow downs caused by the seasonal nature of the business, equipment failures, serious illness of key employees or other adversities beyond the operators' control. Papillon proposes that subsequent to a 180-day inactive period, the FAA should secure a ''Statement of Intent to Operate'' from the tour operator. This statement would outline the operator's business plan for the following three-year period. If upon the three-year anniversary of that statement, the operator has not resumed air tours or sold the business, the FAA would reassign its allocations on a *pro rata* basis to the other active operators.

AirStar Helicopters maintains that 180 days is too arbitrary and recommends a minimum of 360 days, especially in light of the ''use it or lose it'' provisions.

The proposed 180-day lapse period is supported by the Environmental Coalition.

FAA Response: This provision is adopted with the modifications discussed below. The FAA recognizes that the loss of an air tour operator's allocations would be a significant action. It is not the intent of this provision to be punitive. Rather the intent is to ensure that allocations are distributed amongst operators who are conducting an air tour business in the GCNP SFRA. The use or lose provision is important because it recognizes that the FAA is the sole controller of the allocations. If not used, the air tour operator will lose its allocations, thus its operating privilege in the GCNP SFRA, and the FAA will assert its control.

Based on comments from the air tour operators, the FAA, in consultation with NPS, is modifying this section to establish a show cause provision prior to the end of 180 consecutive days. Under this provision, an operator who does not use its allocations for 180 consecutive days, but who intends to do so in the future, must submit a written request for extension to the Las Vegas FSDO prior to the expiration of the 180-consecutive-day period. This written request must show why the operator did not conduct business during the prior 180 days and when it intends to resume business operations. In response the FSDO will issue a letter indicating whether the request for an extension is approved and the length of the extension granted, if any, which will not exceed 180 consecutive days. Operators will be allowed to request one extension; thus the maximum amount of time an operator would be granted under the use or lose provision would be 360 days.

9. Flight Plans Section 93.323

This section of the NPRM proposed to require each certificate holder conducting a commercial SFRA operation to file an FAA visual flight rules (VFR) flight plan with an FAA Flight Service Station for each flight. Each flight segment (one take-off and one landing) would require a flight plan. Each certificate holder filing a VFR flight plan will be responsible for indicating in the ''remarks'' section of the flight plan the purpose of the flight. There will be at least six possible purposes: commercial air tour; transportation; repositioning; maintenance training/proving and Grand canyon West. The term ''commercial air tour'' will be as already defined in the proposed rule. The other five terms will be defined in the ''Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual'' as follows:

1. Transportation—A flight transporting passengers for compensation or hire from point A to point B on a flight other than an air tour.

2. Repositioning—A non-revenue flight for the purpose of repositioning the aircraft (*i.e.,* a return flight without passengers that is conducted to reposition the aircraft for the next flight).

3. Maintenance flight—A flight conducted under a special flight permit, or a support flight to transport necessary repair equipment of personnel to an aircraft that has a mechanical problem.

4. Training/proving—A flight taken for one of the following purposes: (1) pilot training in the SFRA; (2) checking the pilot's qualifications to fly in the SFRA in accordance with FAA regulations; or (3) an aircraft proving flight conducted in accordance with section 121.163 or 135.145.

5. Grand Canyon West flight—A flight conducted in accordance with conditions set forth in section 93.319(f).

One commenter explained that using flight plans to ensure compliance with the commercial air tour limitations is a flight safety hazard. If pilots are required to open VFR flight plans, an additional workload will detract from the necessary concentration in monitoring approach control and/or enroute frequencies while maintaining a constant visual vigil.

Air Vegas notes that its past experience with filing VFR flight plans was not positive. It encountered difficulty and confusion when numerous aircraft attempted to contact the flight service station to open VFR flight plans simultaneously. This commenter stats that the opening and closing of VFR flight plans by the pilots, particularly the opening, is unacceptable. The commenter says that all operators from Las Vegas follow the same route from Hoover Dam to the GCNP SFRA. Once inside the GCNP SFRA all aircraft are on the same route, which makes the airspace to and in the GCNP SFRA heavily concentrated. If pilots are required to open VFR flight plans, an additional workload will detract from the necessary concentration in monitoring approach control and/or enroute frequencies while maintaining a constant visual vigil.

FAA Response: This section is adopted with modification. The information obtained from the flight plan will be used to ensure compliance with the commercial air tours operation limitation. Certificate holders may wish to develop ''canned'' flight plans that may be opened and closed quickly. Copies will not have to be maintained. The FAA does not believe this poses an unreasonable burden on the pilot since the pilot does not have to open or close the plan. The rule specifies that the certificate holder is responsible for filing a VFR flight plan. Thus the certificate holder must designate someone who will be responsible for this task. It could be a pilot or a dispatcher or someone else employed by the certificate holder who is assigned this duty. At this time, the FAA does not believe that there will be a resource problem at the flight service stations due to this new requirement. However, the FAA will be closely monitoring this situation and will take action to mitigate any problems that may develop. Certificate holders conducting operations under § 93.309(g) are not subject to the VFR flight plan requirements and must continue to file an IFR flight plan for GCNP SFRA operations in accordance with their operations specifications.

10. Reporting Requirements Section 93.325

The FAA also proposed to modify the reporting requirements by requiring quarterly reports instead of trimester reports. The FAA requested comments on requiring reporting from operators conducting operations in the GCNP SFRA under an FAA Form 7711–1. A question also was raised in the NPRM

as to the time standard that should be used in the reports.

No comments were received on the switch from trimester to quarterly reporting. Several air tour industry commenters state that reporting requirements should not be imposed as a condition of FAA Form 771–1. Papillon states that the increased regulation of operations conducted under this form would harm the Native American Tribes who are the beneficiaries of these activities. Furthermore, these commenters state that since these forms are granted under tight restrictions there is no need for further control.

Several commenters suggest that Mountain Standard Time should be used for the quarterly reporting requirements. GCATC states that their membership is evenly divided on which time measurement to use.

The Environmental Coalition states that the reporting requirements should be applied to all commercial SFRA flights, including transportation, repositioning, maintenance, FAA Form 7711–1, and training flights. Complete reporting will allow better planning and evaluation of resource degradation.

FAA Response: The FAA is adopting this provision without modification. Therefore, under the Final Rule, all commercial SFRA operations, including those conducted under §§ 93.309(g) and 93.319(f), must be reported on a quarterly basis to the Las Vegas Flight Standards District Office. Since commenters are divided on the time measurement issue, the FAA has decided that operators are required to report operations using UTC time. The information submitted in these reports will be used by the FAA and NPS to assess the noise situation in the GCNP and in development of the Comprehensive Noise Management Plan. Certificate holders will continue to submit their reports in written form. Electronic submission is preferable and encouraged.

Additionally, the FAA will require operators conducting operations under an FAA Form 7711–1 to report those operations to the Las Vegas FSDO. The FAA and NPS need this information to develop a clearer picture of the types and numbers of flights operating in the GCNP SFRA. The reporting will be set forth as a condition of the FAA Form 7711–1. This requirement will apply to public aircraft, such as NPS aircraft, as well. The FAA does not believe requiring operators to report FAA Form 7711–1 flights will harm the Indian tribes.

The reporting requirements will become effective 30 days after publication. Because the rule is being implemented after the start of a quarter, operators will report 30 days after the close of the first trimester (January—April) under the old rule, 30 days after the end of June for the May—June time period. July 1st would then start the quarterly reporting requirement.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0653. No comments were received on this information collection submission. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation Summary

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered a significant regulatory action under Executive Order 12866.

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended March 1996, requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade.

The final rule will impose a significant economic impact on a substantial number of small entities. In terms of international trade, the rule will neither impose a competitive trade disadvantage to U.S. air carriers operating domestically nor to foreign air carriers deplaning or enplaning passengers within the United States. This rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

The FAA analyzed the expected costs of this regulatory proposal for a 10-year period (2000 through 2009). All costs in this analysis are expressed in 1998 dollars.

This summary examines the costs and benefits of the final rule that will temporarily limit the number of commercial air tours that may be conducted in the Special Flight Rules Area (SFRA) of the Grand Canyon National Park (GCNP). This rule is necessary as part of an effort to achieve the statutory mandate imposed by Public Law 100–91 to provide substantial restoration of natural quiet and experience in GCNP.

The estimated 10-year cost of this regulation will be $155.4 million ($100.3 million, discounted). The majority of the impact of this regulation will be $154.3 million, ($99.6 million, discounted) in lost revenue (net of variable operating costs) due to the imposition of air tour operations limits. After two years, this requirement may be reviewed and subject to change. At the end of the two years review, the cost in lost revenue will be $13.2 million ($11.9 million, discounted). The status of the quiet technology rulemaking and the Comprehensive Aircraft Noise Management Plan will also be taken into consideration at that time. The estimated 10-year cost of the other provisions to air tour operators is $30,000 or $23,000, discounted. FAA costs are estimated at $1.06 million or $746,400, discounted over ten years.

The primary benefit of this rule is its contribution toward meeting the statutory mandate of substantially restoring natural quiet in GCNP. Quantifiable benefits are the use benefits perceived by individuals from the direct use of a resource such as hiking, rafting, or sightseeing. The estimated 10-year use benefits for ground visitors only, as a result of this rule, are $20.36 million, discounted at 7 percent. In addition to these use benefits, this rulemaking may generate non-use benefits. The non-use benefits of this rulemaking along with the associated rule and commercial air tour routes notice include reduction in existing commercial air tour aircraft noise impacts to certain traditional cultural properties of importance to several Native American Tribes and Nations in the vicinity of the Grand

Canyon National Park. Related benefits to these Native Americans include protection of their religious practices from interference from overhead commercial air tour aircraft flights. The FAA, at this time, does not have adequate data to estimate these non-use benefits of commercial air tour aircraft noise reduction at the Grand Canyon National Park and adjacent traditional cultural properties, but believes that they are significant. The FAA is promulgating this rule in response to congressional mandate.

Commercial Air Tour Industry Profile

The Grand Canyon is the most active commercial air tour location in the United States. Based on Grand Canyon air tour operator reports, requirements contained in § 93.317, and comments containing additional statistical detail, the FAA has revised its original estimates for the first full year of reporting (May 1, 1997 through April 30, 1998)—hereafter referred to as the baseline period, from approximately 88,000 to 90,000 commercial air tours. These air tours provided aerial viewing of the Canyon to about 642,000 passengers, and accounted for just under $100 million ($99.3 million) in revenue. In the baseline period there were 24 air tour operators reporting, 17 of whom conducted air tours over GCNP in airplanes, 6 in helicopters, and 1 operator in a mixed fleet.

Benefits

The primary intended benefit of this rule is its contribution toward achieving the statutory mandate imposed by Public Law 100–91 to substantially restore natural quiet in GCNP. The FAA's and NPS' benefits analysis is limited to commercial air tour aircraft noise because only commercial air tours will be affected by this rule.

The policy decision of GCNP is that a substantial restoration requires that 50% or more of the park achieve ''natural quiet'' (*i.e.,* no aircraft audible) for 70–100 percent of the day. That level of ''quiet'' (50 percent) does not exist today in the park, in spite of past actions to limit noise. Based on noise modeling, the FAA estimates that today only about 32 percent of the park area has had natural quiet restored. Furthermore, if no additional action is taken, estimated future air tour growth will reduce that number to about 25 percent in 9 to 10 years. On the other hand, noise modeling indicates that this rule, together with the other two FAA actions, will increase the restoration of natural quiet to slightly more than 41 percent and maintain that level in the future. The FAA will monitor future operations in the park to determine the actual level of natural quiet that is restored.

Increased Value of Ground Visit Analysis

The benefits of aircraft noise reduction attributable to this rulemaking can be broadly categorized as use and non-use benefits. Increased use benefits from reduced aircraft noise are the added benefits perceived by ground visitors from the direct use of a resource such as hiking, rafting, or sightseeing. However, use benefits also include the benefits perceived by individuals taking air tours. If restrictions are imposed on air tour operations, some of the use benefits perceived by individuals taking air tours will be lost. The benefits to air tourists have not been quantified due to a lack of information. The benefits to ground visitors due to this rulemaking have been quantified and are presented below. Non-use benefits are the benefits perceived by individuals from merely knowing that a resource exists, or is preserved, in a given state. The non-use benefits attributable to this rulemaking have not been estimated.

An economic study has not been conducted specifically to estimate the benefits of this rulemaking. While generally accepted methodologies exist to estimate such values, those techniques are costly and require a significant period of time for the requisite study design, data collection, and analysis steps. An alternative to these resource-intensive techniques is the ''benefits transfer'' methodology. That methodology combines value estimates from existing economic studies with site-specific information (in this case, regarding visitation levels and the nature and extent of noise impacts) to estimate benefits. The benefits transfer methodology has been accepted as an appropriate methodology for estimating natural resource values in two other rulemakings.

The benefits transfer methodology was used to estimate the benefits of this rulemaking where sufficient information existed to do so. This estimation was possible for ground visitors to GCNP, but not for air tourists or for the non-use benefits.

Benefits of Ground Visitors

The site-specific information used in the estimation of benefits accruing to ground visitors includes visitation data for GCNP for calendar year 1998 and a visitor survey conducted to document the visitor impacts of aircraft noise within GCNP. The available visitation data for GCNP permits the categorization of visitors into backcountry users, river users, and other visitors. The activities included in the ''other visitors'' category primarily involves canyon rim sightseeing, as well as other activities not related to backcountry or river use. The total number of visitor-days in 1998 for these visitor groups was 92,100 for backcountry, 66,900 for river and 5.31 million for ''other visitors''.

For purposes of this benefits estimate, the number of visitor-days at GCNP is assumed to remain constant at 1998 levels throughout the evaluation period of the rulemaking. The GCNP visitor survey indicates that these different visitor groups are variously affected by aircraft noise. This survey asked respondents to classify the interference of aircraft noise with their enjoyment of GCNP as either ''not at all'', ''slightly'', ''moderately'', ''very much'', or ''extremely''.

The economic studies selected for use in the benefits transfer discuss visitor-day values, which are also known as ''consumer surplus''. Consumer surplus is the maximum amount an individual would be willing to pay to use a resource, minus the actual costs of use. It is a measure of the net economic benefit gained by individuals from participating in recreational activity.

The visitor-day value for backcountry use, $37.13, was derived from a national study of outdoor recreation. The visitor-day value for river use, $92.44, was derived from the economic analysis contained in the Final Environmental Impact Statement for Glen Canyon Dam operations. The visitor-day value for all other visitor uses in GCNP, $48.72, was derived from an economic analysis of recreation at Bryce Canyon National Park.

FAA assumed that these visitor-day values represented the net economic benefits obtained from recreational uses in GCNP absent any impacts from aircraft noise. Therefore, it is important to note that these values potentially under-state recreational benefits to the extent that they were estimated in conditions where aircraft noise was present.

There is no known economic study that estimates the reduction in the value of recreational uses due to aircraft noise for areas similar to GCNP. Therefore, reductions were assumed in the present analysis. The data and assumptions imply the total value of $17.7 million, which was calculated as the product of the number of visitor-days, the proportion of visitors affected by aircraft noise, the visitor-day value, and the assumed proportional reduction in the visitor-day value, for respective impact levels and visitor categories.

The benefit of this rulemaking is that portion of the total lost value that is associated with the resulting future levels of noise reduction. Through aircraft noise modeling, FAA has predicted the number of square miles within GCNP that would be affected by various levels of aircraft noise, both with and without the commercial air tour limitation.

The reductions in aircraft noise were applied to the total lost consumer surplus value from all aircraft noise in 1998 ($17.73 million) to estimate the current use benefits for future years. This calculation assumes that benefits increase linearly with noise reduction (*i.e.,* a constant marginal benefit from noise reduction). The resulting use benefit estimates the sum to $31.29 million ($25.83 million at the 3 percent discount rate and $20.36 million at the 7 percent discount rate) over ten years. The use benefits for this rule and the airspace final rule will be $45.86 million over ten years, discounted at 7 percent.

Benefits of Air Tourists

The use benefits perceived by individuals taking air tours will likely decrease as a result of this rulemaking. This is due to a reduction in the number of air tours that will be available because of the commercial air tour limitation. FAA estimates that the number of commercial air tours in GCNP would increase an average of 3.3 percent per year without this rulemaking. The effect of the commercial air tour limitation will be to control the number of air tours on affected routes by limiting the amount of growth that would otherwise occur.

FAA estimates that commercial air tours serving approximately 530,000 air tourists in the base year will be subject to the limitation. Assuming that the passenger capacity and load factors for commercial air tours remain constant, the impact of the commercial air tour limitation will be to eliminate the average 3.3 percent annual growth rate in air tourists that would otherwise occur.

The FAA was unable to estimate the visitor-day value of air tourists, given the available data. Nevertheless, an average visitor-day value for air tourists that exceeds the visitor-day value for ground tourists would suggest the use benefit losses of air tourists exceed the use benefit gains of ground tourists. The undiscounted total use benefits of ground tourists from 2000 to 2009 was estimated above as $31.29 million, given the commercial air tour limitation only. Dividing that value by the estimated 1,490,000 individuals who will be potentially excluded from taking air tours over the same period indicates a threshold value for air tourists of $18.70 per visitor-day. The threshold value for air tourists given both the commercial air tour limitation and route changes is $40.06 per visitor-day.

It is important to recognize that this simple analysis of air tourist use benefits does not necessarily indicate a complete loss of benefits associated with this rulemaking. As noted above, increases in either the passenger capacity or load factors of affected flight operations will decrease the reduction in use benefits of air tourists.

Benefits to Native American Communities

Benefits of this rulemaking and the associated airspace rulemaking and the changes to the commercial air tour routes also include those accruing to several local native American cultural and religious practices. The overall size of the 20 LAEQ12hr noise exposure area over tribal lands will be reduced as a result of these actions. This rulemaking and related actions will also reduce air tour aircraft noise levels from the existing noise levels over certain traditional cultural properties and ensure increased privacy and protect Native American religious practices (however, some traditional cultural properties in the vicinity of the direct routes from Las Vegas to the Grand Canyon Airport will receive an increase in noise).

Costs of Compliance and Regulatory Flexibility Determination and Analysis

The FAA estimates that the regulation will result in a potential reduction in future net operating revenue of $154.3 million ($99.6 million, discounted). Additionally, the FAA estimates that there would be approximately $22,320 ($20,860 discounted) start-up costs to operators to implement the flight plan (*i.e.,* filing, activating, and closing a flight plan) adopted from this rulemaking. For quarterly reporting and the other provisions of the rule ((1) requesting modification and initial allocations and (2) transfer of allocations), the cost to air tour operators is estimated to be $30,000 over ten years or $23,000, discounted. Finally, the FAA costs over the next 10 years (including initial allocations) will be $1.06 million or $746,400 discounted. In sum, the total cost of this rule over the next 10 years will be $155.4 million or $100.3 million, discounted.

The main economic impact resulting from the commercial air tour limitation in the GCNP SFRA is the reduction in potential future net operating revenue. This can be calculated by subtracting the net operating revenue associated with the projected future number of commercial air tours under the air tour limitation from the net operating revenue associated with the projected future number of commercial air tours without the air tour limitation.

The baseline period gross operating revenue by route was calculated by multiplying the estimated number of passengers that flew on a specific route for a specific operator by the published retail fare. Variable operating costs for GCNP air tour operators are defined as the costs for crews, fuel and oil, and maintenance per flight hour. Baseline net operating revenue for each aircraft by route is the difference between the gross operating revenue for each route by aircraft and the variable operating costs for each route by aircraft. An air tour operator's total net operating revenue is the sum of the net operating revenues from all of the routes used by that air tour operator.

Commercial air tours in GCNP currently are fixed to the extent that air tour operators cannot increase the number of aircraft shown on their operations specifications for use in the GCNP SFRA. The FAA estimated the future number of monthly operations without the final rule. In some cases, it would not be practically feasible to conduct more air tours in a given day because the aircraft were already used to their fullest extent practical.

The final rule assumes that the allocations awarded to each operator will be valid for a two-year period. After that time, the air tour operator's allocations may be revised for various reasons. In this analysis the FAA assumed that this allocation would continue beyond two years.

The analysis does not take into consideration that air tour operators could switch from smaller-sized aircraft to larger-sized aircraft. Consequently, in this analysis, the number of available seats is fixed throughout the entire time period. Holding the number of seats constant and assuming that more individuals will want to take air tours in the future implies that air tour operators should be able to raise air tour prices. This analysis does not consider a new equilibrium price given that supply becomes fixed while demand increases.

Cost of Operating Scenario to Operators—Uniform Year With No Peak/Off Peak Delineation on Commercial Air Tours

In the final rule, the FAA is not adopting either peak season

apportionment for allocations discussed in the NPRM Based on these decisions:

• After the first two years, the certificate holder's allocations may be revised based on the data submitted under § 93.325, an updated noise analysis, and/or the status of the Comprehensive Noise Management Plan.

• Allocations will be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA except in the Dragon and Zuni Point corridors. Dragon and Zuni Point corridor allocations again will be determined based on the number of operations an air tour operator conducted in this region for the base year period. Operators conducting no operations in these corridors for the base year will receive no allocations for this region.

The final rule will limit all commercial air tours in the GCNP SFRA on a 12 month basis so that such operations conducted by certificate holders in the SFRA do not exceed the amount of air tours reported in accordance with current § 93.317 for the base year. The number of commercial air tours that a certificate holder can conduct will be shown on the certificate holder's operations specifications as allocations.

Revisions in Accordance With Specific Rule Changes in Consideration of the Hualapai Tribe and Substantial Economic Impact

Ninety percent of the helicopter and 10 percent of the airplane tours that are conducted along the SFAR 50–2 Green 4 and Blue 2 air tour routes respectively, land on the Hualapai Indian Reservation (the Reservation) either along the Colorado river, at Grand Canyon West Airport (GCW), or both. Both the helicopter and airplane tours landing at the Reservation are a significant source of income and employment to the Hualapai Indian Nation (the Tribe).

The Hualapai Reservation encompasses approximately 1 million acres adjoining the southwestern quadrant of GCNP and includes 108 miles of the Colorado River through the Grand Canyon. The majority of the Reservation's inhabitants live below the poverty level and unemployment was estimated in 1995 to range from 50–70 percent of the adult population. Much of the Tribal economy is based on tourism, and Grand Canyon West has been identified by the Tribe as the primary means by which to address its high unemployment rate while preserving the Tribe's natural and cultural resources.

In the NPRM, the FAA considered the impact of an operations limitation on the Tribe within the context of the 2.5 multiplier. However, the FAA, through comments and testimony offered at the Las Vegas public hearing held in August 1999, believes the direct impact to the Tribe is more severe than initially believed. Therefore, in this Final rule, the FAA will not impose a limitation on certain air tours to the Reservation due to the significant adverse economic impact on the Tribe so long as these tours are operated in compliance with § 93.319(f).

The FAA is adopting May 1, 1998 through April 30, 1999 as the more appropriate baseline to assess its cost relief estimates for the Tribe because the FAA believes this baseline more accurately portrays the current economic activity at GCW and the Reservation. After the completion of federally funded airport renovations and runway resurfacing during the fall of 1997, there was a significant increase in air tours and tourism to the Reservation. In addition, a helicopter operator, well established in the Tusayan air tour market, expanded operations to the West end and began conducting helicopter tours in support of the Tribe after the close of the May 1, 1997 through April 30, 1998 baseline period.

Comparing May 1, 1998 through April 30, 1999 to the May 1, 1997 through April 30, 1998 baseline, the FAA estimates that all applicable air tours increased to about 21,850 (10,950 airplane; 10,900 helicopter). The Tribe collects at least $2.3 million annually from air tour operators in the form of landing fees, monthly leases, trespass permits and per passenger payments for a Reservation guided tour and lunch plus an unspecified amount derived from passenger purchases of crafts and souvenirs.

Assuming the 3.3 percent compound annual rate of growth, the FAA estimates that in the absence of an exception being extended to the applicable air tours, the Tribe would forego the potential revenue generated from an additional 25,700 air tours carrying 133,900 over the 2000–2009 time period. The restoration to the Tribe of future revenue over the years 2000–2009 resulting from the elimination of operations limitations on those tours will be approximately $643,400 in landing fees and $4.3 million in ground tour revenue. This action, then, removes a restraint placed on the Tribe's uninterrupted access to these air tours and their passengers, the principal revenue source for the Reservations's continued economic development, and the FAA estimates that this cost relief will be $4.9 million ($3.1 million, discounted) over the next ten years.

To remain consistent with the overall Regulatory Evaluation and costs of this Final Rule, the analysis that follows concerning the operators and tours that are conducted to GCW Airport and the Reservation will use the May 1, 1997 through April 30, 1998 baseline. From this baseline data, the FAA estimates that about 19,200 (11,300 airplane; 7,900 helicopter) air tours were conducted along the Blue 2 and Green 4 air tour routes. These air tours were conducted by 10 airplane and 4 helicopter operators, and carried approximately 119,000 passengers that generated $19.9 million in gross operating revenue ($16.2 million in net operating revenue). Using the 3.3 percent compound annual rate of growth, if no exception were granted, the FAA estimates that the total cost of the final rule will be $198.4 million. The part of this final rule cost attributable to an operations limitation along these two air tour routes would be approximately $58.3 million ($37.6 million, discounted) in gross operating revenue losses and $48.3 million ($31.4 million, discounted) in net operating revenue losses for the years 2000 through 2009.

By excepting the air tours of the operators maintaining valid contracts with the Tribe that are conducted along these two air tour routes, the FAA has reduced the overall cost (net operating revenue) of this Final Rule by $43.9 million ($28.5 million, discounted) to $154.5 million ($99.5 million, discounted) for the ten-year period 2000–2009. These amounts were calculated based on an estimated reduction in air tours and air tour passengers of approximately 51,550 and 320,500, respectively, for the same ten-year time frame. Thus, by excepting those air tours conducted along these two air tour routes that are in support of the Tribe, the FAA estimates that the actual amount of the cost contributed to the total cost of this final rule will be reduced to $5.1 million ($3.3 million, discounted) in gross operating revenue losses and $4.5 million ($2.9 million, discounted) in net operating revenue losses for the years 2000 through 2009.

In the absence of the exception, the FAA estimates the portion of the above costs that are directly associated with a 3.3 percent growth in the current level of tours conducted along the two air tour routes in support of Tribal economic development is $34.2 million ($20.2 million, discounted) in reduced gross operating revenue and $31.2 million ($20.25 million, discounted) in reduced net operating revenue over ten

years. This is based on reductions in air tours and passengers of 22,000 and 119,200, respectively, resulting from the operations limitation part of the final rule.

The FAA does not have data indicating the percentage of air tours reported in the baseline period that landed at the Reservation. Thus, those operators who currently hold contracts with the Hualapai will also receive their allocations as originally established. The FAA estimates that the non-Hualapai portion of the air tour business conducted by these operators along these two routes could expand at 3.3 percent for twelve years before the cost impact of the operations limitation becomes measurable. Thus, during the ten-year time frame 2000–2009, there will be no costs incurred by operators maintaining contracts with the Tribe for that portion of their air tour business conducted along these two routes that does not necessarily contribute to the economic development of the Tribe. The FAA estimates that the portion of the above costs associated with a 3.3 percent growth in the current level of non-Hualapai tours conducted along the two air tour routes is $19.0 million ($12.3 million, discounted) in reduced gross operating revenue and $12.7 million ($8.2 million, discounted) in reduced net operating revenue for the years 2000–2009.

By extending an exception from the operations limitation part of the final rule to those air tours and air tour operators who maintain contracts with and provide economic support to the Tribe, the FAA estimates the final costs of this rule attributable to air tours conducted along these two air tour routes will be reduced to $5.1 million ($3.3 million, discounted) in gross operating revenue and $4.5 million ($2.9 million, discounted) in net operating revenue for the years 2000–2009.

The overall total cost relief accruing to the operators for the years 2000–2009 provided in this Final Rule by excepting the air tour businesses that maintain contracts with the Tribe from the operations limitation component is estimated to be $53.2 million ($34.3 million, discounted) in gross operating revenues and $43.9 million ($28.5 million, discounted) in net operating revenues. Therefore, by excepting the air tours along these two air routes that are conducted in support of the Tribe, the FAA has reduced the overall cost (net operating revenue) of this Final Rule to $155.4 million ($100.3 million, discounted) for the ten-year period 2000–2009.

Cost of Reporting Requirements to Operators

The FAA considered two reporting requirement alternatives in the NPRM, these being quarterly reporting and trimester reporting. The existing rule requires certificate holders to report three times annually, but the final rule will change this to quarterly reporting, in § 93.325. Since the existing rule already requires certificate holders to establish a system to implement the reporting requirement, the FAA assumed there will be no start-up costs to implement this requirement.

Under the reporting requirement scenario, the written information will have to be provided to the Las Vegas FSDO four times per year. The FAA assumes that each operator will have to collate and verify the information that they have been collecting throughout the year. The time it takes to complete these two tasks would be 2 hours per operator regardless of the number of aircraft; this assumes that the operators have been recording the information throughout the year. The total incremental cost to the industry to move to quarterly reporting is estimated at $11,000 for 10 years or $8,600, discounted.

The FAA considered two alternative means of monitoring the allocations, a form system and the filing of flight plans, in the NPRM. The requirement to file a flight plan is in the final rule. Section 93.323 of the final rule will require each certificate holder conducting a commercial SFRA operation to file a visual flight rules (VFR) flight plan with an FAA Flight Service Station for each such flight. A flight consists of one take-off and one landing. The ''remarks'' section of the flight plan will be completed to indicate the purpose of the flight out of six designated purposes. The information obtained from the flight plan will be used to ensure compliance with the commercial air tour limitation. Copies will not have to be maintained by the certificate holder or carried on board the aircraft.

The extent to which an operator will be impacted will depend upon the volume of his/her commercial air tour business in GCNP and the number of aircraft and pilots providing air tour service. Additionally, the cost impact will be influenced by whether the operator conducts air tours daily on a regular frequency.

Relying on information from the Las Vegas FSDO, the FAA has identified the following four principal areas where start up costs for the larger, more regularly scheduled operators will be incurred: (a) Creation of ''canned'' VFR flight plans (templates) to be filed with the Reno or Prescott Flight Service Station; (b) rewriting of existing General Operations Manuals to incorporate the new procedures; (c) set-up of a pilot training program; and (d) training of pilots. The FAA assumes the first three tasks and possibly the fourth, the instructing of the pilots in the new procedures, will be the responsibility of each operator's Director of Operations. The FAA estimates that the total initial fixed costs to the Grand Canyon air tour operators for the VFR flight filing requirements will be about $22,300 or $20,900, discounted.

Cost of Other Provisions to Operators

Operators will incur costs associated with (1) requesting modification and allocations and (2) transfer of allocations. The FAA estimates that the cost of these provisions can be up to $20,000 or $14,000, discounted over 10 years.

The FAA recognizes that the air tour business in the GCNP is constantly changing. Thus, due to mergers/acquisitions, bankruptcies, etc., certificate holders may believe that the data submitted for May 1, 1997 to April 30, 1993 was not reflective of their business operations. Therefore, the FAA permitted any certificate holder who believed that the base year data does not reflect its business operation to submit a written statement requesting that its initial allocation be revised.

Ten operators requested modifications to their proposed initial allocations following publication of the NPRM. The one-time cost to the industry would be between $2,500 and $5,000 (which includes ten days or 80 hours of effort) or between $2,300 and $4,700, discounted.

The FAA also recognizes that air tour operators often utilize a variety of contracting/subcontracting methods to handle passenger loads during busy periods. Therefore, the FAA will allow an allocation to be transferred among certificate holders, subject to the restrictions enumerated in the Preamble of this rule. Under the final rule, all certificate holders are required to report any transfer of allocations to the Law Vegas FSDO in writing. The FAA distinguishes between temporary and permanent transfers of allocations.

The FAA assumes any operator costs associated with temporary transfers to be part of the on-going business cost of conducting air tours of the Grand Canyon and views such costs as de minimus. Permanent transfers of allocations resulting from mergers/acquisitions, bankruptcies, or other

reasons that affect operations, will require FAA approval through the modification of the operations specifications in addition to the required reporting to the Law Vegas FSDO in writing.

For this analysis, the FAA assumes two operator transfers per year. The annual cost to the industry will be between $1,000 and $2,000 annually (about a total of 32 hours annually) or between $900 and $1,900, discounted. The cost over 10 years will be between $10,000 and $20,000 or between $7,000 and $14,000, discounted.

Cost of the Final Rule to the FAA

The FAA, as a result of this rule, will incur costs associated with the initial allocation, recording and tracking, filing of flight plans, and transfer of allocations. Over the next 10 years, FAA costs are expected to be $1.06 million or $746,400 discounted.

Under this final rule, each certificate holder reporting commercial air tours to the FAA in accordance with current § 93.317 will receive one allocation for each air tour conducted and reported during the base year period. Certificate holders identified in the NPRM as receiving allocations to conduct air tours in the SFRA received written notification of their allocations.

The FAA will need to develop an allocation process and prepare the necessary information to send to each air tour operator. This one-time administrative work will require analyst, clerical, legal, and management resources. The FAA assumes that it will take about two weeks to set up a spreadsheet and prepare the necessary information to send to each air tour operator. The initial cost to implement this part of the rule will be $3,800 in the first year only.

In addition, the FAA will incur recurring annual costs from the recording and tracking of the information provided by the provided by the operators. Again, this will require analyst, clerical, legal,and management resources. The agency estimates that the total cost of these elements would be about $99,300 annually and $992,800 over ten years ($697,300, discounted).

Allocations to conduct air tour operations in the GCNP SFRA will be an operating privilege initially granted to the certificate holders who conducted air tour operations during the base year and reported them to the FAA. This allocation will be subject to reassessment after two years.

The FAA estimates that, on average, the FAA will spend about 80 hours managing the transfer of allocations from each merger or 160 hours annually assuming two mergers, transfers, etc. annually. The FAA estimates that cost will be about $6,500 annually or $64,800 over ten years or $45,500, discounted.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended March 1996, requires regulatory agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' The Small Business Administration defines airlines with 1,500 or fewer employees for the air transportation industry as small entities. For this final rule, the small entity group is considered to be operators conducting commercial air tours in the GCNP SFRA and having 1,500 or fewer employees. The FAA has identified a total of 25 such entities that meet this definition.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

The FAA has estimated the annualized cost impact on each of these 25 small entities potentially impacted by the rule. The final rule is expected to impose an estimated total cost on operators of $155.4 million ($100.3 million, discounted). The average annualized cost over ten years is estimated at about $960,000 for each operator (with a range of $200 to $6.3 million). The FAA has determined that the rule will have a significant impact on a substantial number of small entities, and has performed a regulatory flexibility analysis. As discussed above, most small entities will incur an economically significant impact.

Under Section 603(b) of the RFA (as amended), each regulatory flexibility analysis is required to consider alternatives that will reduce the regulatory burden on affected small entities. The FAA has examined several alternative provisions of this final rule that will be discussed below. In addition, the FAA is also required to address these points: (1) Reasons why the FAA is considering the rule, (2) the objectives and legal basis for the rule, (3) the kind and number of small entities to which the rule will apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule.

Reasons Why the FAA Is Considering the Final Rule

Public Law 100–91 recognizes that noise associated with ''aircraft overflights'' at the GCNP is causing ''a significant adverse effect on the natural quiet and experience of the park.'' This legislation directed the NPS to develop recommendations to achieve the substantial restoration of natural quiet in GCNP. The FAA was directed, pursuant to Public Law 100–91, to implement these recommendations unless there was a safety reason not to do so. The FAA and NPS believe it is necessary to impose a commercial air tour limitation in order to stabilize noise levels in the SFRA while further noise analysis is conducted.

The Objectives and Legal Basis for the Final Rule

The objective of the final rule is to limit all commercial air tours in the GCNP SFRA on a 12-month basis. Commercial air tours conducted by certificate holders in the SFRA are not to exceed the amount of air tours reported in accordance with current § 93.317 for the period from May 1, 1997 through April 30, 1998.

The legal basis for the rule is found in Public Law 100–91, commonly known as the National Parks Overflights Act. Public Law 100–91 stated in part, that ''noise associated with aircraft overflights at GCNP [was] causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.'' Further congressional direction is discussed in the history section of this regulatory evaluation.

The Kind and Number of Small Entities to Which the Final Rule Would Apply

The final rule applies to 24 affected part 135 and part 121 commercial air tour operators, each having 1,500 or fewer employees. The FAA estimates that all 24 operators (25 entities) will be impacted by the final rule. The FAA has limited financial profile information (e.g., operating revenue, operating expenses, operating profit, net operating revenue, and passenger revenue) for six of the impacted operators. Balance sheet information on assets and liabilities is not readily available. However, the FAA received financial information from two

air tour operators; a summary of their submitted material is discussed in the Appendix to the full economic analysis.

The Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

Each of the operators affected by this rule will need to comply with certain reporting requirements. Certificate holders conducting commercial SFRA operations will complete a flight plan for each flight. The FAA estimates this compliance effort can impose an additional one to five minutes on the part of the certificate holder per operation for each of the small entities during each year of compliance, for a total of 4,500 hours annually.

In addition, certificate holders conducting commercial air tours will need to report quarterly to the FAA certain information on the total operations conducted in the SFRA to the FAA. The FAA estimates that this compliance effort will take place four times per year (one additional time compared to the current rule) and will impose an additional 50 hours of labor on the industry annually. This provision will cause an operator, regardless of the number of aircraft, to expend an additional 2 hours of labor annually (including record maintenance).

The initial assigned allocation involved operator requests for modifications that the FAA estimates will impose about 1 to 2 person days of added work. Ten operators requested modification to their allocations. As discussed above, the FAA estimates that the paperwork burden to each of these firms will range from 8 to 16 hours.

Finally, the FAA assumes that no more than 2 operators each year are likely to submit requests for permanent transfers of allocations (e.g., to enter, leave or merge). The FAA estimates that the two firms will spend about 32 hours annually preparing the required documentation to be submitted to the FAA.

Excluding the provisions that impose a one-time burden (initial allocations that will affect five operators the first year annually of 80 hours total), the FAA estimates each certificate holder will have imposed an additional annual reporting burden on average of 575 hours of labor. Over a period of 10 years, a total of approximately 143,750 hours will be spent.

All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The FAA is unaware of any federal rules that either duplicate, overlap, or conflict with the final rule.

Alternatives

Aircraft noise in the GCNP can be controlled in a number of ways. Hence, noise-reducing measures can be accomplished through any one or a combination of these methods. As directed by Public Law 100–91, NPS developed a number of recommendations to substantially restore natural quiet. These recommendations were included in NPS' 1994 Report to Congress. These recommendations included a number of different approaches to achieving the statutory mandate of Public Law 100–91. Some of these recommendations were adopted in 1996. Others have been under consideration. The following summarize the status of each of these recommendations:

Altitude Restrictions

As one alternative, aircraft could be required to fly above specific altitudes in certain parts of GCNP. The noise generated by these aircraft flying at higher altitudes would be more widely dispersed before it reached the ground than if these aircraft were flying at lower altitudes. Ground visitors would then be less likely to hear the aircraft the higher up they are flying. Air tour passengers, however, would see less dramatic views of the Grand Canyon when flying at higher altitudes.

The FAA has adopted this approach as one of the several options it is using to control aircraft noise in GCNP. On May 27, 1998, the FAA issued SFAR No. 50–2. This SFAR established four flight-free zones from the surface to 14,499 feet above mean sea level in the area of the Grand Canyon. It also prohibited flight below a certain altitude in certain sectors of the Grand Canyon. On December 31, 1996, the FAA issued a final rule (61 FR 69302) which raised the ceiling of the SFRA to 17,999.

Establishment of Air Tour Routes

Another approach used by the FAA is to contain aircraft noise to certain parts of the Grand Canyon by establishing air tour routes. On May 27, 1998, the FAA issued SFAR No. 50–2, which provided for special routes for air tours. On December 31, 1996, the FAA issued a final rule (61 (FR 69302) which established a new FFZ and altered the boundaries of the other already established FFZs. This rule change necessitates a change in the air tour routes, which the FAA will establish next year (enforcement of the airspace actions in 61 FR 69302 has been delayed until after the establishment of these new routes).

Air Tour Curfews

Visitors to the Grand Canyon are likely to be more annoyed by aircraft noise during certain times of the day than at other times of the day. The FAA established air tour curfews in 61 FR 69302 to address this problem. In the summer season, air tours may not operate in the Dragon and Zuni Point corridors between the hours of 6 pm and 8 am; in the winter, the curfew is between 5 pm and 9 am. In future rulemakings, this curfew may be expanded to the rest of the Grand Canyon or the curfew hours may be expanded.

Limits on the Number of Aircraft That Can Be Used

On December 31, 1996, the FAA issued a final rule (61 FR 69302) which placed a cap on the number of ''commercial sightseeing'' aircraft that could operate in the SFAR. The FAA is revising this final rule to limit the number of air tours instead of aircraft because it was determined the aircraft cap was not an adequate limit on growth.

Limits on the Number of Air Tour Operations

Capping the number of flights allowed in the GCNP is another approach for limited aircraft noise that may be permitted in the park. This approach is being adopted by the FAA with this particular rulemaking. This final rule temporarily limits all commercial air tours in the GCNP SFRA on a calendar year basis so that such air tours conducted by certificate holders in the SFRA do not exceed the amount of air tours reported in accordance with current § 93.317.

Expansion of Flight Free Zones

Another approach that the FAA uses to control aircraft noise in the Grand Canyon is to establish Flight Free Zones. Aircraft, under this alternative, would be forbidden from flying over certain parts of the GCNP. This highly restrictive alternative is designed to protect certain areas from any noise emanating from aircraft overhead. SFAR 50–2 established four flight-free zones from the surface to 14,499 feet mean sea level. On December 31, 1996, the FAA established a new FFZ, merged to existing FFZs, and expanded the other two FFZs.

Phase Out of Noisy Aircraft

An approach that the FAA is currently considering is mandating that noisy aircraft be phased out of service over the Grand Canyon. The FAA proposed such an action by issuing an

NPRM on December 31, 1996 to phase out noisy aircraft by 2008. This could be a very expensive rulemaking; costs were estimated at $173 million (undiscounted) in the 1996 NPRM. All these costs would have to be borne by 25 small operators. The FAA has delayed issuing a final rule in order to consider other less costly actions. However, the FAA may choose to issue a final rule on this action in the future.

Encourage the Use of Quiet Aircraft

This recommendation would require aircraft used in GCNP to meet a yet to be defined standard to be considered quiet technology. As stated in the December 1996 final rule on Special Flight Rules in the Vicinity of Grand Canton National Park, quieter aircraft technology incentives are viewed as another approach to substantially restore natural quiet to the Grand Canyon while maintaining a viable tour industry.

Establishment of Aircraft Noise Budgets

An approach that the FAA has not yet adopted, but which is under consideration is the noise budget. In this alternative, the FAA would consider letting the market place allow the aircraft owners to determine which airplanes to fly by rationing the amount of noise that any tour operator could emit. Each tour operator would be allotted a specific amount of noise ''credits'' to be spent over a specific period of time, such as a day, week, or month. These credits would be allocated based on a formula that takes into account the number of tours, and the number and type of aircraft that they had in the base year. Each aircraft type would be assigned a rating based on how noisy it was when compared to a certain decibel level; the noisier the aircraft, the higher its rating. When an operator flew any particular aircraft on its tour, it would use up this numerical rating against the number of noise credits that it had been allocated.

Tour operators could increase their number of tours in two basic ways. They could purchase credits from other operators, thus allowing more tours and/or noisier aircraft. Alternatively, they could invest in quieter aircraft, thus allowing them to fly more tours. Of course, operators could do both, which would certainly increase their number of flights.

A variation on this alternative would be to assign specific routes or specific times of day with positive and negative bonus ''points''. These points could either add to or subtract from the aircraft's rating as incentive for operators to fly or not to fly certain routes or at certain times of the day. Thus, an operator who chose the ''negative points'' routes and/or times of the day would be rewarded by being able to fly more tours. On the other hand, since some of the ''positive point'' routes and/or times of the day might be the more lucrative ones (where and when everyone would want to fly), operators would also be free to try to maximize profits by fling these.

While the FAA has not currently adopted this alternative, the FAA may consider adopting this alternative or elements of this alternative in the future.

Time of Week Restriction

Another alternative not yet under active consideration would be to restrict tours to specific days during the week. This way, certain parts of the Park or the entire Park could be noise free for entire days. This approach might be used during the October ''oars only rafting period.'' A variation would be to combine this alternative with time of day restrictions. Hence, a certain corridor could, for example, be off-limits for tours for 2 mornings and 3 afternoons during the week.

Another variation would be to give the tour operators a number of day-of-the-week ''credits'' and allow the tour operators to bid on which days they would want to fly each corridor and how many tours would be flown on each of the days when tours would be allowed. This variation would allow operators to maximize profits given the constraint of days of the week when tours would not be allowed.

It should be noted that these and, possibly additional alternative, may be considered in the context of efforts to encourage the use of quiet technology. Where possible, the FAA will seek to implement options that will lower air tour operators' overall costs while promoting the goal of substantial restoration of natural quiet.

Affordability Analysis

For the purpose of this RFA, an affordability analysis is an assessment of the ability of small entities to meet costs imposed by the final rule. These are two types of costs imposed by the rule: (1) out-of-pocket costs (actual expenditures) associated with applications and documentation and (2) loss of potential future operating revenue associated with an increase in the level above current levels. This latter burden may be significant to financial viability because companies depend on growth in operating revenue to provide necessary cash to meet long-term obligations such as equipment purchase loans. A company's short-run financial strength is substantially influenced, among other things, by its liquidity (working capital position and its ability to pay short-term liabilities). Unfortunately, most of the data to analyze this are not available.

There is an alternative perspective to the assessment of affordability, which pertains to the size of the annualized costs of the rule relative to annual revenues. The lower the relative importance of those costs, the greater the likelihood of implementing either offsetting cost saving efficiencies or raising fares to cover increased costs without substantially decreasing passengers.

This analysis assesses affordability by examining the annualized cost of compliance relative to an estimate of total Grand Canyon commercial air tour operating revenues for each of the small entities. The annualized change in net operating revenues corresponds to foregoing the anticipated 3.3 percent per year growth of undiscounted net operating revenues. This number is relatively constant across all air tour operators because the majority of the negative impact (lost revenues) imposed by this rulemaking is directly related to the number of air tours that are being conducted. For these operators, there may be some prospect of absorbing the cost of the rule through fare increases.

It appears that given the current state of the industry, changes in net operating revenues might be offset by increased airfares. The limit on air tours will restrict the future supply of Grand Canyon air tours while demand for air tours is expected to increase, which might make it easier for affected entities to increase prices. No clear conclusion can be drawn with regard to the abilities of small entities to afford the reductions in net operating revenues that will be imposed by this final rule because the FAA is not able to estimate the amount of revenue increase obtained through price increases.

Disproportionality Analysis

The FAA does not believe any of the 25 entities will be disadvantaged relative to larger operators because within the context of the RFA, all Grand Canyon commercial air tour operators are small regardless of their size relative to one another.

Competitiveness Analysis

All air tour operators currently operating in GCNP are small entities. All these operators will be proportionately impacted by the commercial air tour limitation provision of this rulemaking (the commercial air tour limitation has the greatest impact of

all provisions of this rulemaking). The smaller operators will not be put at a disadvantage relative to the largest operators as a result of this provision.

Except for air tours to and from Grand Canyon West Airport, this rulemaking contains one feature impacting competitiveness. The commercial air tour limitation will protect established operators from competition from new entrants or form newly established operators who are just getting set up and therefore provide only a limited number of air tours. In this instance, the commercial air tour limitation puts new entrants and newly established operators at a disadvantage to the established operators because that provision will limit the number of air tours they can provide to only those allocation that they can obtain through transfer.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which the final rule will cause small entities to close their operations. However, the limited profit and loss data that the FAA has and the affordability analysis can be an indicator in business closures. In 1997 and 1998, of the data that the FAA has for 6 air tour operators, two of these air tour operators experienced losses in both years.

In determining whether or not any of the 25 small entities will close business as the result of compliance with this rule, one question must be answered: ''Will the cost of compliance be so great as to impair an entity's ability to remain in business?'' The FAA has incomplete information on which or how many of these small entities are already in serious financial difficulty and the limited number of commenters who supplied information to the docket did not elaborate on this. However, this rule can have a significant impact on those small entities that re already experiencing financial difficulty. This rulemaking can prevent them from escaping their financial difficulties through increased revenues from an increase in futurecommercial air tours. To what extent the proposed rule makes the difference in whether these entitles remain in business is difficult to answer.

Summary of Benefits and Costs

Public Law 100–91 was adopted to substantially restore natural quiet and experience in GCNP. The primary intended benefit of this rule is its contribution toward restoring natural quiet and experience in GCNP. The FAA estimates that this rule, together with its two associated actions of route adjustments, will restore natural quiet to about 41 percent of the park. The estimated 10-year use benefits (benefits derived from hiking, rafting, or sightseeing) as a result of this rule and the associated actions will be about $39.8 million, discounted as 7 percent over 10 years. This rule, without the associated actions, will provide a discounted ''use'' benefit to ground visitors of about $20.4 million over the same period. The FAA does not have adequate data to estimate the non-use benefits of aircraft noise reduction at GCNP, but believes this rulemaking may generate significant non-use benefits.

The estimated 10-year cost of these regulations will be $155.4 million ($100.3 million, discounted). The majority of the costs of these regulations will be $154.3 million ($98.6 million, discounted) due to the imposition of air tour operations limits. After two years, this requirement may be reviewed and subject to change. At the end of the two years review, the cost in lost revenue will be $13.2 million ($11.9 million, discounted). The status of the quiet technology rulemaking and the Comprehensive Aircraft Noise Management plan will also be taken into consideration at that time. The estimated 10-year cost of the other provisions to air tour operators is $30,000, or $23,000, discounted. FAA costs are estimated at $1.06 million or $746,400 discounted.

International Trade Impact Assessment

The FAA has determined that the rulemaking will not affect non-U.S. operators of foreign aircraft operating outside the United States nor will affect U.S. trade. It can, however, have an impact on commercial air tour business at GCNP, much of which is foreign.

The United States Air Tour Association estimated that 60 percent of all commercial air tourists in the United States are foreign nationals. The Las Vegas FSDO and some operators, however, believe this estimate to be considerably higher at the Grand Canyon, perhaps as high as 90 percent. To the extent the air tour limitation rulemaking disrupts the marketing of Grand Canyon air tours to foreign visitors and thereby reduces their patronage of these tour, the commercial air tour industry can potentially experience an additional loss of revenue beyond what is expected as a result of the cap.

The FAA cannot put a dollar value on the portion of the potential loss in commercial air tour revenue associated with a weakening in foreign demand for U.S. services concomitant with the limitation on commercial air tours of the Grand Canyon.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Environmental Review

The FAA has prepared a Final Supplemental Environmental Assessment (FSEA) for this final rule to

ensure conformance with the National Environmental Policy Act of 1969. Copies of the FSEA will be circulated to interested parties and a copy has been placed in the docket, where it will be available for review.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and Recordkeeping requirements.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends part 93, in chapter I of title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.303 is revised to read as follows:

§ 93.303 Definitions.

For the purposes of this subpart:

Allocation means authorization to conduct a commercial air tour in the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA).

Commercial air tour means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing. If the operator of a flight asserts that the flight is not a commercial air tour, factors that can be considered by the Administrator in making a determination of whether the flight is a commercial air tour include, but are not limited to—

(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) Whether a narrative was provided that referred to areas or points of interest on the surface;

(3) The area of operation;

(4) The frequency of flights;

(5) The route of flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package; or

(7) Whether the flight in question would or would not have been canceled based on poor visibility of the surface.

Commercial Special Flight Rules Area Operation means any portion of any flight within the Grand Canyon National Park Special Flight Rules Area that is conducted by a certificate holder that has operations specifications authorizing flights within the Grand Canyon National Park Special Flight Rules Area. This term does not include operations conducted under an FAA Form 7711–1, Certificate of Waiver or Authorization. The types of flights covered by this definition are set forth in the ''Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual'' which is available from the Las Vegas Flight Standards District Office.

Flight Standards District Office means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

Park means Grand Canyon National Park.

Special Flight Rules Area means the Grand Canyon National Park Special Flight Rules Area.

3. Section 93.315 is revised to read as follows:

§ 93.315 Requirements for commercial Special Flight Rules Area operations.

Each person conducting commercial Special Flight Rules Area operations must be certificated in accordance with Part 119 for Part 135 or 121 operations and hold appropriate Grand Canyon National Park Special Flight Rules Area operations specifications.

§ 93.316 [Removed and Reserved]

4. Section 93.316 is removed and reserved.

5. Section 93.317 is revised to read as follows:

§ 93.317 Commercial Special Flight Rules Area operation curfew.

Unless otherwise authorized by the Flight Standards District Office, no person may conduct a commercial Special Flight Rules Area operation in the Dragon and Zuni Point corridors during the following flight-free periods:

(a) Summer season (May 1–September 30)–6 p.m. to 8 a.m. daily; and

(b) Winter season (October 1–April 30)–5 p.m. to 9 a.m. daily.

6. Section 93.319 is added to read as follows:

§ 93.319 Commercial air tour limitations.

(a) Unless excepted under paragraph (f) or (g) of this section, no certificate holder certificated in accordance with part 119 for part 121 or 135 operations may conduct more commercial air tours in the Grand Canyon National Park in any calendar year than the number of allocations specified on the certificate holder's operations specifications.

(b) The Administrator determines the number of initial allocations for each certificate holder based on the total number of commercial air tours conducted by the certificate holder and reported to the FAA during the period beginning on May 1, 1997 and ending on April 30, 1998, unless excepted under paragraph (g).

(c) Certificate holders who conducted commercial air tours during the base year and reported them to the FAA receive an initial allocation.

(d) A certificate holder must use one allocation for each flight that is a commercial air tour, unless excepted under paragraph (f) or (g) of this section.

(e) Each certificate holder's operation specifications will identify the following information, as applicable:

(1) Total SFRA allocations; and

(2) Dragon corridor and Zuni Point corridor allocations.

(f) Certificate holders satisfying the requirements of § 93.315 of this subpart are not required to use a commercial air tour allocation for each commercial air tour flight in the GCNP SFRA provided the following conditions are satisfied:

(1) The certificate holder conducts its operations in conformance with the routes and airspace authorizations as specified in its Grand Canyon National Park Special Flight Rules Area operations specifications;

(2) The certificate holder must have executed a written contract with the Hualapai Indian Nation which grants the certificate holder a trespass permit and specifies the maximum number of flights to be permitted to land at Grand Canyon West Airport and at other sites located in the vicinity of that airport and operates in compliance with that contract; and

(3) The certificate holder must have a valid operations specification that authorizes the certificate holder to conduct the operations specified in the contract with the Hualapai Indian Nation and specifically approves the number of operations that may transit the Grand Canyon National Park Special Flight Rules Area under this exception.

(g) Certificate holders conducting commercial air tours at or above 14,500 feet MSL but below 18,000 feet MSL who did not receive initial allocations in 1999 because they were not required to report during the base year may operate without an allocation when conducting air tours at those altitudes. Certificate holders conducting commercial air tours in the area affected

by the eastward shift of the SFRA who did not receive initial allocations in 1999 because they were not required to report during the base year may continue to operate on the specified routes without an allocation in the area bounded by longitude line 111 degrees 42 minutes east and longitude line 111 degrees 36 minutes east. This exception does not include operation in the Zuni Point corridor.

7. Section 93.321 is added to read as follows:

§ 93.321 Transfer and termination of allocations.

(a) Allocations are not a property interest; they are an operating privilege subject to absolute FAA control.

(b) Allocations are subject to the following conditions:

(1) The Administrator will re-authorize and re-distribute allocations no earlier than two years from the effective date of this rule.

(2) Allocations that are held by the FAA at the time of reallocation may be distributed among remaining certificate holders, proportionate to the size of each certificate holder's allocation.

(3) The aggregate SFRA allocations will not exceed the number of operations reported to the FAA for the base year beginning on May 1, 1997 and ending on April 30, 1998, except as adjusted to incorporate operations occurring for the base year of April 1, 2000 and ending on March 31, 2001, that operate at or above 14,500 feet MSL and below 18,000 feet MSL and operations in the area affected by the eastward shift of the SFRA bounded by longitude line 111 degrees 42 minutes east to longitude 111 degrees 36 minutes east.

(4) Allocations may be transferred among Part 135 or Part 121 certificate holders, subject to all of the following:

(i) Such transactions are subject to all other applicable requirements of this chapter.

(ii) Allocations authorizing commercial air tours outside the Dragon and Zuni Point corridors may not be transferred into the Dragon and Zuni Point corridors. Allocations authorizing commercial air tours within the Dragon and Zuni Point corridors may be transferred outside of the Dragon and Zuni Point corridors.

(iii) A certificate holder must notify in writing the Las Vegas Flight Standards District Office within 10 calendar days of a transfer of allocations. This notification must identify the parties involved, the type of transfer (permanent or temporary) and the number of allocations transferred. Permanent transfers are not effective until the Flight Standards District Office reissues the operations specifications reflecting the transfer. Temporary transfers are effective upon notification.

(5) An allocation will revert to the FAA upon voluntary cessation of commercial air tours within the SFRA for any consecutive 180-day period unless the certificate holder notifies the FSDO in writing, prior to the expiration of the 180-day time period, of the following: the reason why the certificate holder has not conducted any commercial air tours during the consecutive 180-day period; and the date the certificate holder intends on resuming commercial air tours operations. The FSDO will notify the certificate holder of any extension to the consecutive 180-days. A certificate holder may be granted one extension.

(6) The FAA retains the right to re-distribute, reduce, or revoke allocations based on:

(i) Efficiency of airspace;

(ii) Voluntary surrender of allocations;

(iii) Involuntary cessation of operations; and

(iv) Aviation safety.

8. Section 93.323 is added to read as follows:

§ 93.323 Flight plans.

Each certificate holder conducting a commercial SFRA operation must file a visual flight rules (VFR) flight plan in accordance with § 91.153. This section does not apply to operations conducted in accordance with § 93.309(g). The flight plan must be on file with a FAA Flight Service Station prior to each flight. Each VFR flight plan must identify the purpose of the flight in the ''remarks'' section according to one of the types set forth in the ''Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual'' which is available from the Las Vegas Flight Standards District Office.

9. Section 93.325 is added to read as follows:

§ 93.325 Quarterly reporting.

(a) Each certificate holder must submit in writing, within 30 days of the end of each calendar quarter, the total number of commercial SFRA operations conducted for that quarter. Quarterly reports must be filed with the Las Vegas Flight Standards District Office.

(b) Each quarterly report must contain the following information.

(1) Make and model of aircraft;

(2) Identification number (registration number) for each aircraft;

(3) Departure airport for each segment flown;

(4) Departure date and actual Universal Coordinated Time, as applicable for each segment flown;

(5) Type of operation; and

(6) Route(s) flown.

Issued in Washington, DC, on March 28, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7949 Filed 3–28–00; 4:59 pm]

BILLING CODE 4910–13–M